

The Collection of Hindu Law Texts

Volume II. Part IV.

YÂJNAVALKYA SMRTI

WITH THE COMMENTARIES

OF

(1) The MITÂKṢHARÂ by Vijñāneśvara Bhikṣhu

(2) The VĪRAMITRODAYA by Mitramiśra

AND

(3) The DĪPAKALIKÂ by Sūlapâṇi

Vyawahârâdhyâya.

Chapters VIII-XXV (Pages 978-1380)

An English Translation with notes, explanations etc

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NOTE

The Chapter which now follows *i.e.*, the VIII — deals with the Laws of Partition and Inheritance and topics cognate to these. Mr. Colebrooke selected this portion from the *Mitākshara* of *Vijñāneswara* and presented it along with his translations of similar portions from other works describing the whole collection as “Standard Hindu Law Books.” In fact, what is known and referred to as Colebrooke’s *Mitākshara* or simply the *Mitāksharā* in judicial decisions generally is this “Extract from the *Mitāksharā* composing so much of its work as relates to Inheritance.”

Having regard to the length of the period for which Colebrooke’s translation has been in use and relied upon as an authority, and having regard to its excellence as a translation which has thus acquired a high authority as a work of reference, special care has been taken in the following pages not to disturb the spirit and generally even the letter, of Colebrooke’s translation, unless a departure was found to be necessary, in which case the differences are explained in the notes below the line.

Another point to be noted is the division into Chapters, Sections and Paragraphs noticeable in Colebrooke’s translation. There is no such division in the original work. It will be remembered that the *Mitāksharā* is a running commentary written by *Sri Vijñāneswara* on the *Smṛti* of *Yajñavalkya*. *Vijñāneswara* takes the verses of *Yajñavalkya* and appends his gloss thereto, and the English Translation of the First Book and the first seven Chapters of the Second Book of this work published in these “Collections” has closely followed the method adopted by *Vijñāneswara* so that the translation appearing in this Series presents an exact resemblance of the original text as it is. The same method is continued in the following Chapters. However, for facility of comparison and reference, the divisions made by

Colebrooke are indicated by black figures in the body of the translation, and the portion covered in each page is also indicated in brackets at the top. It is, however, necessary that the text is appreciated in its original form from which this division into Chapters, Sections and Paragraphs appears to have been made by Colebrooke probably for convenience of reference. For it has led at times to serious consequences in that some of the judgments of the Courts appear to have been influenced by this division. Indeed, some of the *placitâ* in Colebrooke's translation have been treated as *verses*, giving an impression that the portion under reference represented *verses* in the original *Smṛti*.

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NOTE TO ABBREVIATIONS.

Collections —	Stands for	—	"The Collections of Hindu Law Texts"
			as published in this Series.
Collections Sk	" "	—	Collections Sanskrit texts.
Manu —	" "	—	Manu-Smṛiti as published in the Sacred Books of the East Series, Vol. XXV and this Series.
Nārada —	" "	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
Bṛhaspati —	" "	—	Published by Dr. Jolly, S. B. E. Series Vol. XXXIII.
Gautama —	" "	—	Ānandāśrama Series No. 61.
Āpastamba —	" "	—	Sacred Books of the East Series.
Vasiṣṭha —	" "	—	Sacred Books of the East Series and the Bombay Sanskrit Series.
Kātyāyana —	" "	—	Quotations from Kātyāyana Compiled by Mr. P. V. Kane
Jaimini —	" "	—	The Sūtras of Jaimini, as published in the Ānandāśrama Series No. 54.
Baudhāyana —	" "	—	Sacred Books of the East Series and the Mysore Sanskrit Series.

(Colebrooke Ch I Sect I, pp 13)

CHAPTER VIII.

*PAGE 73. On the Distribution of Dāya

(1) Evidence, human and divine, has been severally explained. The distribution of Dāya¹ is now being propounded by the Yogamūrti.²

(2) Here the term *Dāya* signifies that 'wealth' which becomes the property of another solely by reason of his relation³ to the owner. (3) It is of two sorts Unobstructible⁴ and obstructible Here the wealth of the father as also

1 The term दाया "*Dāya*" has been translated by Mr Colebrooke as "Inheritance" and the expression (व्यवसाय) "*Dāya Vibhāga*" as "Partition of heritage" With a view to avoid confusion, the original word *Dāya* has been kept as such It will be seen that this chapter treats of the Law of Partition as well as of Inheritance, and in both cases the thing that is partitioned or inherited is termed *Dāya* Of the various meanings which this word has in Sanskrit the two which are appropriate and call for special attention here are "a share or portion," and "Inheritance or patrimony" See *Kṛishṇa vs Sams* 9 Mad 69

In the next sentence the Author explains the term *Dāya* to be "that wealth which becomes the property of another, solely by reason of relation to the owner" And this means that 'wealth' which becomes the property of another, in the right of the relation of offspring and parent or the like, which he bears to his father or other relative who is the owner of the wealth, is signified by the term "*Dāya*" [see *Śubodhinī* p 42 ll 30-33] thus leading to the distinction of the अव्यवसाय and व्यवसाय दाया

Another term which deserves special attention equally with the term *Dāya* is the word (विभाग) *Vibhāga* It is found to have been translated as "partition". The better translation however would be "Distribution" as this word would cover the cases both of Partition and of Inheritance

This passage has been referred to in a number of cases See particularly *Ganika Vagadati vs Bai Jalab* 24 Bom 132

2 Yoga mūrti, the 'contemplation itself', the image of holiness &c the sage योगमूर्ति

3 Wealth—the original word is दाया It includes all kinds of property and is not necessarily confined to money As contrasted with the wordy 'fund,' it may mean movable 'Estate' is comprehensive

4 Here the word दाया 'relation' is confined to and indicative of relation by family connection See *Janda Koor vs Shoo Pershai* 17 Cal 3737, 78

5 Colebrooke translates as "unobstructed" The original is अशङ्क्य *ashāṅky* *banā* that which is not liable to obstruction See § 274 *Mayer & Hindu Law* It is that estate in which the future heir has a vested interest by the mere fact of his existence See observations of Chandavarkar J in *Bai Parra vs Bai Soma* 38 Bom 424

Definition of Un-
obstructible and
Obstructible *Dāya*

of the (paternal) grandfather becomes the property of his sons or grandsons, in the right of their being his sons and grandsons respectively and thus (this) is an inheritance not liable to obstruct

- 5 son But property devolves on (paternal¹) uncle, brothers and the rest, (but only) in the absence of the male issue and of the owner, and thus the existence of a son, and the existence of the owner are impediments² (to the devolution); and as it is (only) in the absence of these³ that the property devolves upon those in their capacity
10 as uncle and brother (respectively), this is an inheritance subject to obstruction The same should be understood in respect of their sons and the rest

- (4) Partition⁴ (*labhīga*) is the adjustment of diverse rights regarding property held collectively by assigning severally (to individuals) particular portions of the aggregate (5) Entertaining the same opinion it has been said by Narada⁵ "Where a partition of the paternal estate is instituted⁶ by the sons, it is called by the
15 'learned Partition of *Dāya* (heritage)—a title at law' 'Paternal'

1 This translation is in accordance with the reading adopted in the text of the "Collections" or विवृताशयनिबन्धः. The other reading is विवृताशयनिबन्धः which appears to have been before Mr. Colebrooke when he published his translation.

2 *Pratibandhah*—

पुत्रपतेः सन्निवृत्तौ प्रतिवन्धः —The existence of the son, and also of the owner, are the obstructions. It should be noted that this element of non vesting distinguishes it from the प्रतिवन्धः in which the interest being vested the existence of these two or others do not work as impediments. The right of representation is always given effect to, with the result that the interest of persons in lineal order is unaffected, and is therefore unobstructed. See *Subodhini* also I 42 I 31.

3 i.e. the male issue and the owner

4 Compare with this *Janamirodha* (I 1000 II, 6-10) and *Janamirodha* (I 1000 II, 6-10) विवृताशयनिबन्धः विवृताशयनिबन्धः विवृताशयनिबन्धः. See *Sakshin* vs *Gangotri Narada* 5 BHCNOCJ 128/135, and *Jelliammal* vs *Anthi* 5 Mad 61/67.

5 Ch. VIII 1

6 The term in the text is *Anuloma* (अनुलोम) is contemplated or thought of

here is indicative of any¹ relationship which is a cause of property. Also (the expression) 'By the sons' indicates relations by propinquity² (in general)

(6) (Thus) the following points have to be expounded in this chapter, 1: (a) at what time (b) of what, (c) how, and (d) by whom is a partition to be made? Of these, 'at what time,' 'how,' and 'by whom' will be explained in the course of interpreting the (several) verses (bearing on these subjects) respectively. 'Of what,' a partition (may take place) is the only subject (to be) considered here

(7) Does the right of ownership arise after partition,⁴ or does partition take place of property after there was the right of ownership? Here the right of ownership is itself being explained (And the question is) whether the right of ownership is deducible from *Sastra* alone, or whether it may be obtained from other (means of) proof?

1 'Any relationship' मन्त्र निमित्तसंबन्धेऽप्यत्रम् literally when translated it would be 'is inclusive by extension of relationship which is a cause of property' Colebrooke has translated it as if the original were सम्बन्धेऽप्यत्रम्. The sense indicated appears to be so

In this sense, any relationship i.e. not necessarily {father's (पितृ)} which entitles the claimant to take the property, not necessarily agnatic or cognatic but generally a claim based on legal title

But the legal title is limited by the next line to propinquity प्रपञ्चनि— which has been brought in the explanation of तन्ने —by the sons

2 The *Vṛnamitrodaya* makes it further clear and restricts it to relations connected by lineal consanguinity See also *Sādadhini* Text p 43 ll 9-11 Tr p 10 ll 18-24

Thus while the interpretations of the *Mitakshara* and the *Vṛnamitrodaya* point more to a coparcenary body, the *Dāya Bhāga* extends it to a wider body viz. the joint family सम्पत्तिवत्तन सम्पत्तिपदवत्तन किञ्चिन्नि सम्पत्तिवत्तनवत्तनम् अत्र एव सम्पत्तिवत्तनविभागवत्तनम्. सम्पत्तिवत्तनम्— The term *Dāya Bhāga* is used for a division of the goods of any sort on any relations. Accordingly *Nārada* has pointed out the distribution of the property of the mother and like others³

It should be noted that this divergence between the two points of view is in keeping with their respective backgrounds. For while the remarks of the *Mitakshara*, *Vṛnamitrodaya* and *Vṛnamitrodaya* and others are introductory to the verse II 115 which treats of the partition by the father the *Dāya Bhāga* treats generally of partition

1 Of Yaśvalūkyā

2 See *Sādadhini*, Text I 47, ll 16-20 Tr I 10 ll 3-15

(8) Here¹ (it may be said that) it is proper to say that it is

An objection

deducible from Śāstra alone, on account of the text

of Gautama² : "An (individual becomes) owner by

"inheritance, purchase, partition, seizure,³ or finding. Acceptance is for

5 "a Brāhmana an additional (mode of acquisition); conquest for a Kṣhatriya,

"śrīya, (and) gain (by labour) for a Vaiśya or Śūdra". If the right of

ownership be deducible from other (means of) proof, this text would

not have any force⁴ So Manu, while discussing the extended⁵ appli-

cation of the term thief, observes⁶ : "A Brāhmana seeking to obtain

10 "wealth from a man who took⁷ what was not given to him, is regarded

"precisely as a thief, even though he obtain it by sacrificing for such

"a man or by teaching him". If the right of ownership were (deducible

from) merely temporal (sources), the rule which directs the punish-

ment of such as obtain wealth by officiating at religious rites, or by

15 similar means, from one 'who took what was not given to him,' would be irrelevant. Moreover, were (the right of) ownership a

(purely) worldly matter⁸ one should not say : "my property has

"been wrongfully taken by him"; for according to the above assump-

tion the ownership would be with the trespasser. Now (if it be said

20 that because) the property of another was seized by this man, and

(that therefore it) does not become the property of the usurper,

(the answer is) then no doubt can arise, whether it appertain to one

or the other, just as would be the case in regard to the distinction of

1 The author sets out the opponent's argument which is called the *prasaṅga*

2 Ch. X 38-42 3 Cf. Apprehensio, vel Occupatio

4 I.e. it would be meaningless. The original is *वेद एवमर्थमन्यथा*, "This text would have no meaning"

5 *अतिदेश* means "an extended application or application by analogy"
अतिदेशो नाम इतरवर्त्मस्य इतरविम्बं प्रयोगस्य अतिदेशः ।

also *अन्यत्रैव प्रणीताया इतराया धर्मसंज्ञतेः । अन्यत्र कार्वत प्रसिद्धिदेशः स उच्यते ॥*

or *प्राकृतान्धर्मो यस्मान्नसमानिषु कर्मसु । धर्मवेषो येन स्वादतिदेशः स उच्यते ॥*

6, Ch. VIII 340

7, *चिरेण* "If he wishes or desires to take or obtain"

8 See *Sūtradhik. Text* P. 43 ll. 30-36, Tr. 110 ll. 7-27.

gold, silver or the like. Therefore ownership is deducible from (the commands of the Śiṣṭra alone¹

(1) {9} To this the answer is, (the right of) ownership is temporal only, for it effects transactions relative to worldly purposes, just as rice or similar substances do. 3
 The Answer
 But the consecrated fire and the like deducible from the Ś'āstra² do not give effect to actions relative to secular purposes

[It may again be argued] Indeed even the consecrated fire, &c has the capacity to boil food &c [The answer is] not so, for it is not as³ such that the consecrated fire effects the boiling of food &c Then as what? [Answer] It is as fire (actually) perceptible to the senses (and) as such 10

Here, however, it is not through its visible form, either gold or the like, that the purchase of a thing is effected, 15
 (2) A Question and an Answer
 but by reference to ownership. Indeed, that which is not a person's property in a thing does not give effect to his transfer of it by sale or the like. Besides, the use of property is seen even among the inhabitants of the (barbarous) countries of the frontier⁴ who are unacquainted with the practice laid down in the Śiṣṭra. since purchase, sale and other transactions are observed among them 20

(10) Moreover, such as are conversant with the science of reasoning deem ownership⁵ acquired by regulated means of acquisition

1 Here ends the objection or *gr̥h̥ya*, and from the next sentence follows the answer

2 The basis of the consecration of fire is *śāstra* alone

3 A fire has two characters the spiritual one of consecration, and the worldly one of combustion. It effects the boiling of food in its worldly capacity as an ordinary fire, as also in its special spiritual capacity

4 *प्रपञ्च-क्षेत्र* The border or frontier region. According to the *Anurakṣa*—“The country of the *Mlechchhas*”, “*प्रपञ्चो म्लेच्छदेश इत्यम्*” (अनुर ५।१।५)

5 Colebrooke translates thus: “deem regulated means of acquisition a matter of popular recognition”. The original has “*निर्गोपयन् सत्यम्*”.

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a matter of popular recognition In the third clause of the *Lapsā Sūtra* the venerable *Guru* has demonstrated as untenable an objection,

which might be raised as: "if restrictions relative to the acquisitions of goods, apply to religious ceremony, there could not be any property, since proprietary right is not temporal", by showing that 'the efficacy of acceptance and other modes of acquisition in constituting proprietary right is a matter of popular recognition' Indeed, if

10 The objection acquisition of wealth be only for (the performance of) religious ceremony, there would be no right of ownership, and consequently (the celebration of) a sacrifice itself would not be possible (To this the answer would be) It is a blunder

The answer of any one who affirms that acquisition does not produce a proprietary interest since this is a con

15 tradiction in terms Accordingly, the Author, premising the acceptance, by popular recognition, of the notion of the right of ownership, even in stating the demonstrated conclusion, proceeds to explain the purpose of the disquisition in this manner "Therefore a breach of

1 The *Lapsā Sūtra*—(See Balambhatti Sk p. 122 Subodhini p. 41 Tr pp 112-114) This is a disquisition as regards the desire of acquisition (*Lapsā*) and is introduced in the Second *Sūtra* or *Adhikāraṇa* "कस्मिन्मित्रे दुहस्य तस्य स्निग्धवत्तया वैमल्यम्", in the first *Pāda* of the fourth *Adhyāya* of the *Sūtras* of Jaimini

In the first *Sūtra* the distinction between religious and personal purposes is examined (कस्मिन्पुरुषाभिवर्धितम्) In the second, the inquiry is whether the acts of a man e.g. the milking of a cow &c. are relative to the person or to the act of religion In the third the question examined is whether restrictions as to the means of acquisition noticed in the *Udās* in reference to the four classes, must be taken as relative to the person or to the religious ceremony And the demonstrated conclusion is that property when acquired is capable of being used for any number of purposes but it can be used only by the person who acquires it, and since, therefore, the person acquiring it is the constant factor and the purposes for which it may be used may vary, the restrictions as to acquisition relate to the person

Acquisition implies a relation between two objects, the owner and his own—like that of a mother and son, there can, therefore, be no acquisition without the thing to be acquired, and it is a contradiction in terms to say 'acquisition does not produce proprietary right', as it is to affirm 'my mother is a barren woman' See Balambhatti Sk p. 126 ll. 24-26 Also Subodhini Text pp. 41 and 45 Tr pp. 112-114

"the restriction affects the person not the religious ceremony", and the meaning of this passage is thus expounded¹ "If restrictions respecting the acquisition of chattels regard the religious ceremony, its celebration would be perfect with such property only, as was acquired consistently with those rules, and the celebration of the religious ceremony would not be perfect, if performed with wealth obtained by infringing the rules and consequently according to the objector, the fault would not affect the man if he deviated from the rule but according to the demonstrated conclusion since the restriction regarding acquisitions affects the person the performance of the religious ceremony is complete even with property acquired by a breach of the rule, and it is an offence only on the part of a man, because he has violated an obligatory rule" It is consequently acknowledged, that even what is gained by infringing restrictions, is property because, otherwise there would be no completion of a religious ceremony.

(11) From what has been said before it should not be supposed that even what is obtained by robbery and like such means, would be property, for, proprietary right in such instances is not recognised by the world and it (also) disagrees with established practice

(12) Thus since property, obtained by acceptance or any other (sufficient) means is established to be temporal the acceptance of alms and similar other modes (prescribed) for a *Brahmana*, conquest and similar means for a *Kshatriya* husbandry and the like, for a *Vaisya* and service and the rest for a *Sūdra* are propounded as restrictions intended for spiritual purposes, while inheritance and like others are modes stated as common to all, (vide the text) "An individual becomes owner by inheritance, purchase, partition seizure or finding"

(13) Here (*ritā*), 'inheritance' is (used to indicate) unobstructible heritance 'Purchase' is well known "Partition signifies

1 By the venerable Gossāma and Brahakara.

2 Of Gautama Ch X 39 (See p 982 1 3 above)

3 Acquisition by occupation of Occupation

4 अक्षय-वा द्वा

beritage subject to obstruction¹ "Seizure" or occupation is the appropriation (such as) of water, grass, wood and the like, not previously appertaining to any other (person as owner) "finding" is the discovery of a hidden treasure or the like. If these reasons exist, the person is (recognised as the) owner. If they take³ place, he becomes proprietor. "In the case of a *Brāhmana*, that which is obtained by 'acceptance is additional'—(the meaning of this text⁴ is) that, in the case of a *Brāhmana* whatever is obtained by means of gift &c is an additional (mode of acquisition) not common⁵ (to all tribes), similarly as to the text 'In the case of a *Kṣatriya*, what is obtained by victory⁶," "additional" is again understood (The meaning is that) in the case of a *Kṣatriya*, whatever is obtained by conquest, amercement, or the like is (an additional mode) not common (to all the tribes) (So in the text⁷) "In the case of a *Vaiśya* and a *Sūdra* what is "earned" (as wages by labour)" Here also "additional" is again understood—(The meaning is that)—what is earned as wages by agriculture keeping the cattle⁸, or the like, is in the case of a *Vaiśya* a (mode of acquisition) not common (to all tribes), and in the case of a *Sūdra*, that which is earned in the form of wages by service of the regenerate, and by similar means, is (a mode of acquisition) not common (to all tribes)

Thus, likewise, among the various causes of property which are peculiar to mankind, whatever has been stated as peculiar in the case of certain mixed classes in the direct⁹ or inverse¹⁰ order of the tribes, e.g. driving of horses in the case of the *Sūtras*, and like other modes, is indicated by the word 'earned', for all such acquisitions assume

1 संप्रतिषेधो वाप ।

2 विपद्ये ।

3 इत्येव is the reading adopted here. There is another reading ॥ एतेव Tr "if they are known &c"

4 ॥ ॥ of Gautama cited above

५ असामान्यः ॥ a peculiar or special mode of acquisition specially mentioned

6 विजितम्

7 निर्विद्वे

8 इतिगोपेता

9 अन्तर्गमनः— ॥ the issue of a mixed marriage when the father is of a class higher than that of the mother. See Ācharādhyaya Ver 91-92 pp 246, 240 above

10 प्रतिलोमनः— ॥ the issue of a mixed marriage where the mother is of a higher class and the father of a lower one. See Ācharādhyaya Ver 93-94 p 252 above

the form of wages or hire : for according to the (lexicon) *Trikāṇḍee*
 " the word *niricā* is used to indicate wages or occupation." All this
 should be understood as wealth acquired by modes not common
 (to all tribes)

(14) As for the precept¹, (respecting the succession of) ' the widow 5
 and the daughters ' &c., the declaration (of the order of succession),
 even in that text, is intended to prevent any mistake, although the
 proprietary right be a matter familiar to the world, where many persons
 might (but for this precept) be supposed entitled to share the heritage
 by reason of their affinity to the (deceased) owner. The whole is 10
 therefore unexceptionable.

(15) As for the remark, that if property were temporal, it
 The objection. could not be said " my property has been taken
 and " away by him ", that also is not accurate; for a
 The answer doubt respecting the proprietary right does arise 15
 through a doubt concerning the purchase, or other transaction, which
 is the cause of that right.

(16) The purpose of the preceding disquisition is this : A
 text² says : " When *Brāhmaṇas* acquire wealth by a blameable act,
 " they are purged of the guilt by the abandonment of such wealth, by 20
 " prayer, and by rigid austerity." Now, if property be deducible only
 from *Sūtra*, that which has been obtained by blameable means *e. g.* by
 accepting presents from an improper person, or by larceny, or similar
 other means would not be property at all, and consequently would
 not be property partible among sons. But if the proprietary interest 25
 be a worldly matter then even what is obtained by accepting presents
 from an improper person &c. is property, and may be divided among
 heirs; and the atonement above referred to in the text " they are
 " purged of the guilt by its abandonment &c." regards the acquirer
 only; but of the sons, however, their proprietary 30
 interest arises by their right of inheritance and

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1. Amara III 3.214.

2. Yājñ II. 135, *infra*

3. Of Mana Ch. XI 124

therefore no blame attaches to them, since Manu¹ says. "There are
"seven lawful modes of acquiring property, (1) inheritance, finding,
"or friendly donation purchase, conquest lending at interest, the
"performance of work, and the acceptance of gifts from virtuous men"

- 5 (17) Next, it is doubted whether the right of property arises
from partition or the division of a proprietary interest which already
was existing? (18) Of these (positions), that
Another position of property arising from partition is right, since
a man to whom a son is born is enjoined to
10 maintain a holy fire for, if property were vested by birth alone,
the estate would be common to the son as soon as born and the
father would not be competent to maintain a sacrificial fire and per-
form other religious duties which are accomplished by the use of
wealth (19) Likewise, the prohibition of a division of that, which
15 is obtained from the liberality² of the father, previous to separation,
would not be pertinent since no partition of it can be supposed, for
it has been given by consent of all parties As says Nārada³
"The two kinds of property, (1) gain of valour and the wealth of a
"wife, and also that which is acquired by science—are three kinds of
20 "property not subject to partition, and so is a favour conferred by
"the father (exempt from partition)" (20) So the text⁴ concern-
ing an affectionate gift viz. what has been given by a husband,
"when pleased,⁵ to his wife, she may consume as she pleases, even
"when he is dead, or may give it away excepting immovable
25 "property," would not be pertinent, if property were vested by birth
alone Nor is it right to connect the words 'excepting immovable
property' with the terms "what has been given" (in this text),
for that would be a forced construction by connection of disjointed

1 Ch X 115 See *Tonnappa vs Pappanna*, *major* 4 Mad at page 24—
where the court enters into an elaborate discussion of these and other passages of
the Mitāksharā, for determining the relative positions of a father and a son
under the Mitāksharā

2 अङ्गः a favour, pleasure

3 Chapter XIII-6

4 Of Vishnu

5 Cf Mayukha IV 10-9 where it is ascribed to Nārada

See—*Damodar vs Purva* *sandas* 7 Bom 163 *Jagmohan Das vs Mangaldas*
10 Bom 546 *Surayya vs I* *Amath* 25 All 303

terms (21) As for the text "The father is master of the gems, pearls and corals and of all (other movable property), but neither the father nor (even) the grand father is so of the whole¹ immovable 'estate' and also (the text²) 'By favour of the father, clothes and ornaments are used but immovable property may not be consumed, even with the father's indulgence'—which passages forbid a gift of immovable property through favour they both relate to immovables which have descended from the paternal grand father And although after the grand father is dead his effects become the common property of the father and sons it appears even from this text, that the gems pearls, and other movables, belong exclusively to the father, while the immovable estate remains common (22) Therefore property is not by birth but by demise of the owner or by partition Accordingly, since the demise of the owner is a cause of property there is no room for supposing that a stranger could not be prevented from taking the effects because the property was vacant³ after the death of the father before partition So likewise, in the case of an only son the estate becomes the property of the son by the father's decease, and does not require partition

(23) To this the answer is It has been shown that property is a matter of popular recognition and the right of sons and the rest, by birth, is most familiar to the world and so it cannot be denied but the term partition is generally understood to relate to effects belonging to several owners, and does not relate to that which appertains to another, nor to goods vacant or unowned For the text of Gautama expresses "Let ownership of wealth be taken by birth as the venerable teachers direct." (24) Moreover the text above cited viz⁴ "(the father is the master) of 'gems, pearls corals &c'" is pertinent to the supposition of a proprietary

1 गृह—The meaning of the text is that, not the father not even the grand father is the master of any of the immovable property &c

2 The author of this text is not known

See *Shri Sūtram Paṇḍit vs Shri Harishar Paṇḍit* 35 Bom 169 at p. 161

3 द्रव्यमपि नानुपपन्नम्—There being no proprietary right over the property &c on account of the non-existence of the owner &c (See *Dalambhatti Sk.* p. 131).

4 vi of Nārada II. 1-4 above

right vested by birth. Nor is it right to affirm that it relates to immovables which have descended from the paternal grand father¹ since the text expresses "neither the father, nor even the grandfather¹." This rule², that the grandfather's own acquisition should not be given away while a son or a grandson is living, indicates a proprietary interest by birth. According to *the other opinion*, the precious stones, pearls, clothes, ornaments, and other effects though inherited from the grandfather, belong to the father under the special provisions of the law, so according to our opinion also, the father has³ power, under the same text, to give away such effects, though acquired by his father. Thus there is no⁴ difference.

(25) As for the text of Vishnu⁵ viz. "(That which has been 'given') by the husband when pleased &c" which mentions a gift through affection, that must be interpreted as relating to property acquired by the father himself and given with the consent of his sons and the rest for, by the text⁶ above cited viz. "(the father is the 'master of) gems pearls &c' the fitness of things only those other than immovables, for an affectionate⁷ gift was determined with certainty (26) As for the alleged disqualification⁸ for religious duties which are prescribed by the *Veda* and which require for their accomplishment the use of wealth sufficient for such purposes is inferred from the cogency of the text itself which enjoins their performance and which is in the nature of a command.

1 The word ancestral can only apply to the property of the paternal grand father and his ancestors and not to the self-acquisition of the father. See *Bajjnath vs Mahara*, 8 Luck 26, see also *Muhammad Husain vs Aswa Noidan* 30 Bom L. R. 979 (P. C.)

2 viz. That which is stated in the text of Narada cited above

3 See no 1 p 304

4 i. e. Difference of opinion

5 Cited above at p 386, ll. 22-24

6 i. e. of Narada & Vishnu

7 Thus a father cannot give even a small portion of ancestral property to his daughter on the ground that she looked after him in his old age. *Jennappa vs Chinnaras* 59 Bom 460 nor can he make a will. *Parvatibai vs Jhagran* 30 Bom 593

8 Both Balambhatti & Subodhini explain this by saying that the power to perform these is given by special texts which enjoin their performance

(27) 'Therefore' (it is settled that) ownership in the father's or grand father's estate is by birth. Still it (also) stands (as good law) that the father has independent power in the disposal of effects others than immovables for indispensable acts of duty and for purposes prescribed by the texts of law as gifts through affection, support of the family, relief from distress and so forth but he is subject to the control of his sons and the rest in regard to the immovable estate, whether acquired by himself or inherited from his father or other

1 This text regarding the birth right in the ancestral property and the father's power of disposal over the same has been noticed in various cases

In *Babu vs Timma* 7 Mad 307 at p 362 Turner O J observes as follows in regard to this portion of the *Mitakshara*. The effect of the several passages taken together is that while the ownership of the son is recognized in all property, whether the self acquired property of his father or ancestral the father has power to dispose at his pleasure of his self acquired movables and with a consent which his son must give of his self acquired immovables—he has the power to dispose of ancestral movables for purposes inculcated by sacred texts and of all property for indispensable acts of duty but the son may interdict him if he applies ancestral wealth whether movable or immovable to purposes other than those sanctioned. See also *Jaisingra vs Chammara* 59 Bom 409–37 Bom LR 483–487 and 50 Cal 268–271 40 All 90 (will by the father)

The following may be noted as some of these

Poo Balwant Singh vs Pasi Ashori 2 I A 511 6 at p 68 *Gandhi Vagmalal vs Bai Jodhab* 21 Bom 214 *Bachoo vs Hussaidas* 20 Bom 61

Ponnappa Illai vs Pappayagannay 4 Mad at pp 8 16, 42 &c

Gangula vs Ancha Bapulu 4 Mad at p 80

Sivasubrahma Mudali vs Parani Anna 4 Mad at p 103

Narasimha vs Venkatadri 8 Mad 293

Anna Taular vs Janchandra Taular 32 Mad at p 361

(This case discusses the several portions of the *Mitakshara* bearing on the father's right over ancestral property generally)

Aali Parshad vs Ram Charan 1 All 170 *Sudri vs Vadho* 1 All 236

Jasoda Aor vs Shro Parshad 17 Cal at p 36

Chandraden Singh vs Mata Persad 31 All 176 180 184 187 211

And Ram vs Mangalson 31 All 303

Mohammad vs Asfur Mondul 25 Cal 804

2 Col brooke translates as 'ancestral'. The word in the original text is *pitamah* i.e. belonging to the grandfather. Mr. Colebrooke's translation has been commented on in *Jasoda Persad vs Mata Persad* 31 All at p 182 referring to the remarks of Mr. J. C. Bose in his *Hindu Law* page 375 (2nd Ed.)

- predecessor, *vide* the text¹ "Though immovables or bipeds have been
 "acquired by a man himself, a gift or sale of them should not be made
 'without convening all the sons. They, who are born, as also they who
 'are yet unborn, and they who are still in the womb, require the
 5 'means of support, no gift or sale should, therefore, be made."

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- (28) An exception to it follows² "Even a single individual
 An exception stated "may conclude a donation, mortgage, or sale, of
 'immovable' property, during a season of distress,
 "for the sake of family, and especially for pious purposes" (29) The
 10 meaning of that text is this while the sons and
 grandsons are minors and incapable of giving
 their consent³ or doing similar acts, or while the brothers are so and
 continue unseparated, even one person, who is capable, may
 conclude a gift, hypothecation or sale, of immovable property,
 15 if a calamity affecting the whole property require it, or for sup-
 porting the family, or for performing indispensable⁴ duties,

1 "Of Vyāsa as cited in other compilations"—Colebrooke

2 *Bṛhaspati* as cited in the *Ratnakara* &. —Colebrooke.

3 See *Bhau vs Rajamath* 70 Bom at p 233, also *see, Govind vs Deekaya* 40
 Bom L.R. 530 at p 343

4 and thus render the expenditure a valid binding charge upon their shares.

5 "Indispensable duties" The expression in Sanskrit अक्षय्यवर्तनेषु विप्रदादित्—
 (*Ākṣyam Kartavyeṣu pr-krādāditi*) Tr "For acts which must be performed
 such as obsequies of the deceased ancestors and the like" (see 34 Mad at p 431)

This expression has been subjected to judicial criticism—see *Govindara ulu vs*
Devarabolla 27 Mad at p 209 As regards the term *Ādi*—'and the like'—at the end
 of the above expression, *Muttaswami Ayyar J* observes as follow in *Ponmayya vs*
Papparayungar 4 Mad at p 17 "The phrase *Ādi* both according to Hindu
 law and the rule of construction, refers to annual *Śrāddha*, the ceremony of
upanayana in the case of minors in the three higher classes, and of marriage in
 the case of girls &c—and in short to such ceremonies as, if unperformed, would
 entail a forfeiture of caste or status etc'—and it was held in 27 Mad 209 that
 that expression could not be extended to the marriage of males. This interpreta-
 tion was dissented from later on in *V. Hameswara Sastri vs V. Venkataru*, 34 Mad
 where at p 434 it is observed, "the word *Ādi*—means "beginning with" and
 merely indicates that the father's ceremony which is named is one out of a group
 of ceremonies" The expression simply means "acts, such as the *Śrāddha* and
 the like others which have necessarily to be done" See also 32 Bom 31

such as obseques of the ancestors¹ (manes) (30) As for the text²—
 'Kinsmen whether unseparated or separated are equal in respect
 of (rights in) immovables, for one (alone) has not power over the
 whole to make a gift sale or mortgage—it must be interpreted thus
 among unseparated kinsmen the consent of all is indispensably
 requisite because since the estate is held in common no one is fully
 empowered to make an alienation but among separated kinsmen
 the consent of all tends to the facility of the transaction, by obviat-
 ing any future doubt as to their separation or union it is not
 required on account of any want of sufficient power in the single
 owner and hence the transaction is valid even without the consent
 of separated kinsmen (31) Again as for the text³— Land passes
 by six (formalities) by consent of townsmen of kinsmen of neigh-
 bours and of heirs and by gift of gold and water—consent of
 townsmen is required for the publicity of the transaction since it is
 provided⁴ that 'acceptance of a gift especially of the immovable pro-
 perty should be public, but not that the contract remains incomplete
 without the consent of the townsmen the consent of neighbours
 serves to obviate any dispute concerning the boundary the use of
 the consent of kinsmen and of heirs has already been explained
 (32) *By gift of gold and water*—since the sale of immovable pro-
 perty is forbidden by the text 'In regard to the immovable estate
 sale is not allowed (but) a hypothecation may be made with the con-
 sent (of persons interested), and since also donation is praised in the
 text Both he who accepts land as a gift as also he who gives it are
 performers of a holy deed and shall surely go to heaven,' even when
 a sale is to be made it should be conducted, for the transfer of
 immovable property, in the form of a gift, delivering with it gold
 and water (to ratify the donation). This is the meaning

1 Colebrooke translates obseques of the father but the word *pitr* when used in connection with *Śraddha* indicates other ancestors also who are dead and whose *Śraddha* is to be performed

2 Of Bṛhaspati XXV—13 See *Ponnappa vs Poppa ayyangar* 4 Mad 1 at pages 9 10 54 where this text has been referred to and discussed

3 The author of this passage is not known

4 Yājñavalkya II 176 See III A 216 at p 930

(33) Although the right of property is by birth alone in the estate of the father or the grandfather, we shall mention (later on) a special rule in the text (II. 121) "Land which was acquired by the grandfather &c."

[Colebrooke Sect. II.]

(1) Now¹ with a view to expound, at what time, by whom, and how, partition may be made, the Author says

Yājñavalkya, Verse 114.

If the father makes a partition, let him separate his sons at his pleasure, and either separate the eldest with the best share, or (if he choose) all may be (made) equal sharers

Mitākṣharâ—(2) Vibhāgam chet pitā kuryāt if (ever) the father wishes to make a partition, then icchhayā vibhajet, he may at his pleasure separate, sūtan, his sons from himself; whether one, two, or more sons

(3) The will being unrestrained and no rule being suggested, the Author adds, by way of restriction, jyēṣṭham
Special rule for the share of the eldest wā treshṭhabhāgena, and either (separate) the eldest with the best share. From this it is understood² that he may separate the eldest with the best share, the middle-most with a middle share, and the youngest with the smallest³ share. (4) This distribution of the best and other portions is propounded by Manu⁴: "The additional share (deducted) for the eldest shall be one-twentieth (of the heritage) and which is the best of all the chattels; for the middle-most, half of that; for the youngest, a quarter of it"

1 ऋक्षेयम्—Tr while pointing out (as to, at what time &c,—the Author says &c) This portion has been referred to in *Kāle Parashad vs Panchavan* 1 All 160 (F B) Where it has been held that "The son has under the Mitākṣharâ right to demand partition and part of his share in the ancestral immovable property during the life time of the father and against his will"

2 अतएव : & it follows

3. & 4. as given in the text of Manu here immediately following

4 Ch IX 112.

(5) The term *wâ, either*, is relative to the subsequent alternative *viz*, *sarve wâ syuh samâśinah* or 'all may be equal sharers, i.e. or all, namely, the eldest and the rest, should be made partakers of equal portions.

(6) This unequal distribution moreover, is allowed in reference to property acquired by himself. But, if the wealth descended to him from a line of² ancestors, an unequal partition at his pleasure is not proper, as equality of ownership (over such property) will³ be declared (further on)

(7) Under the text⁴ "If the father makes a partition &c", when the father desires separation, that is one period for partition. Another period, also, is when, even when the father is living, but is indifferent to wealth and disinclined⁵ to pleasure, and when the mother is incapable⁶ of bearing issue — at such a time a partition is admissible merely at the option of the sons⁷, even against the wish of the father, as is shown by Nârada, who, premising partition subsequent to the demise of both parents by the text⁸. "Therefore, let the

"sons divide the wealth equally, when the father is dead", adds⁹, 'Or "when the menstruation of the mother has ceased, and the sisters are married, or when the father's sexual desire is extinguished, and he has become indifferent to worldly interests" Here the words "Let the sons divide the wealth equally" are understood. Gaṇṭama¹⁰ likewise, having said "After the demise of the father, let the sons divide his estate," states a second period "or when the mother is past

1 कृपमय—Hereafter to be stated

2 Colebrooke translates "from his father", but the expression is पितृव्यमाश्रिते पितृक्रमयते) Tr "descended from an unbroken line of male ancestors"

3 Yajñavalkya II 121

4 Yajñavalkya II 114

5 विद्वत्पणे—is satiated or fed up with pleasures

6 इत इत means—and when the mother has ceased to menstruate

7 The Sanskrit expression is पुत्रवृत्ति, at the mere option of the sons. The word वृत्ति is used in a collective as also in a distributive sense. It may therefore be at the option of one son or of more

8 Ch XIII 2

9 Ch XIII 3

10 Ch XXVIII 12

- "child bearing," and a third period has been indicated viz, "while the father lives if he desires separation" So, even while the mother is capable¹ of bearing more issue, though the father be unwilling, if he be addicted² to vice or afflicted with a lasting disease a partition is admissible by the choice of the sons As says Sankha³ (Even) when the father does not wish partition of inheritance takes place if he be 'old, disturbed in intellect, or diseased.' (111)

Sûlapâni

Now the Distribution

Yājñavalkya Verse 114

10

The father if he makes a distribution of his self acquired property, then he may make the sons separate according to his wish, and not the wish of the son

- As says Vishnu⁴ 'If the father separates the sons he may make the sons separate according to his wish in regard to property acquired by himself In regard to the grand father's property, however, the ownership of the father and the son is equal partition cannot be according as he may wish.' Here ownership is the cause.

- So Devala When the father is dead the sons may divide the father's property There will be no ownership of these when the father is living and faultless⁵ Faultless is not degraded

At some places Nârada⁶ mentions a division by the wish of the son even in regard to the father's acquisitions thus 'When the mother has ceased to menstruate and the sisters have been married when the father's

1 अजस्रवर्णः—(Lat) has (yet) the menstruation

2 The translation of Mr Colebrooke is retained here—but the expression in Sanskrit is अपमर्तिनि 'when his conduct is not in conformity with (the rules of) Dharma'—has a wider meaning and force Being addicted to vice is only one phase of "the conduct not being in conformity with Dharma", and the son would then have a wider range of circumstances under which he can ask of a partition

Moreover in explaining the text of Śaṅkha in the next line Balamhata gives अपमर्तिनि as an equivalent of मरिचिचेतसि—which Col brooke has translated as 'disturbed in intellect' According to him the two expressions bear an identical meaning and would mean—When the father has become irreligious

3 Ch XVII 1 2

4 Ch XIII 3

'sexual desire is extinguished, and he has become past (all) desires"
'Sexual desire is extinguished,' i.e., when his capacity for sexual enjoyment is gone Past (all) desires': e, from the householder's position to that of the hermit

Jyeshtham va 'Or the eldest &c': e, he should separate them with the largest share for the eldest Or he may so make (the partition) that all may become equal sharers So Nārada' "By the father himself, those who have been separated into equal or less shares of the property, for them that itself is the law, indeed the father is the master of all' (114) 5

(8) Partition at the pleasure of the father has been stated to 10
of be of two sorts i.e., equal and unequal In this connection, in the case of an equal partition the Author adds a particular rule

Yājñavalkya Verse 115

If he make the allotments equal, his wives² (such of them) to whom no Stridhana³ had been given by the husband or the father-in-law, must 15
be made partakers of equal portions

Mitāksharā —(9) When by his own choice the father makes all his sons partakers of equal portions then the wives also should be made participants of shares equal to those of sons Yātām such of the wives bharitrā swasurena wā stridhanam na dattam, to whom no stridhana 20
had been given by the husband or by the father in law But if stridhana had been given (to a woman) the Author directs further on⁴ (verse 148) half a share to be allotted to her (in the text) "or if any had 'been given, let him assign a half" (10) If, however, he make the allotments by allotting the best share, &c., to the eldest &c., then the 25
wives do not get the best or such other portions, but receive equal shares of the aggregate from which the special shares have been

1 Ch XIII 15

2 A The comments of Virarupa on this should be noted If equal shares are allotted by the father the wives of his sons and grandsons and his own wives to whom no stridhana has been given by their husband or father in law or himself should be made partakers of their husband's share (See Virarupa p. 217 ll 10-12, See also The Daya Kra on Sangraha VI l 27-42.

- “child bearing,” and a third period has been indicated viz, “while the father lives if he desires separation” So, even while the mother is capable¹ of bearing more issue, though the father be unwilling if he be addicted² to vice or afflicted with a lasting disease a partition is admissible by the choice of the sons As says Sankha . ‘ (Even) when
- 5 “the father does not wish, partition of inheritance takes place if he be ‘ old, disturbed in intellect, or diseased.” (114)

Sūlapāni

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10 Yājñavalkya, Verse 114

The father if he makes a distribution of his self-acquired property, then he may make the sons separate according to his wish, and not the wish of the son

- As says Vishnu³ ‘ If the father separates the sons he may make the
- 15 “sons separate according to his wish in regard to property acquired by ‘ himself. In regard to the grand father’s property, however, the ownership ‘ of the father and the son is equal, partition cannot be according as he ‘ may wish ‘ Here ownership is the cause

- So Devala ‘ When the father is dead the sons may divide the
- 20 ‘ father’s property There will be no ownership of those when the father ‘ is living and faultless *Faultless* 1 is not degraded

At some places Narada⁴ mentions a division by the wish of the son even in regard to the father’s acquisitions thus When the mother has “ceased to menstruate, and the sisters have been married when the father’s

'sexual desire is extinguished, and he has become past (all) desires'
'Sexual desire is extinguished,' i.e., when his capacity for sexual enjoyment is gone 'Past (all) desires' i.e., from the householder's position to that of the hermit

Jyēṣṭham vā 'Or the eldest &c' i.e., he should separate them with the largest share for the eldest Or he may so make (the partition) that all may become equal sharers So Nārada' "By the father himself, those who have been separated into equal or less shares of the property, for them 'that itself is the law, indeed the father is the master of all' " (114) 5

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of be of two sorts viz., equal and unequal. In this connection, in the case of an equal partition the Author adds a particular rule

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If he make the allotments equal, his wives² (such of them) to whom no Strīdhana³ had been given by the husband or the father-in-law, must 15
be made partakers of equal portions

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had been given by the husband or by the father in law But if strīdhana had been given (to a woman) the Author directs further on⁴ (verse 148) half a share to be allotted to her (in the text) "or if any had 'been given, let him assign a half' " (10) If, however, he make the allotments by allotting the best share, &c., to the eldest &c., then the 25
wives do not get the best or such other portions, but receive equal shares of the aggregate from which the special shares have been

1 Cf. XII 15

2 A wife gets this share only after the actual distribution *Prastipatti* v, *Dānabho* 63 Cal 601, (10) *Raoji vs Anant* 42 Bom 538

3 Colebrooke translates the word *Strīdhana* as *separate property*—Having regard to the technical character of this expression and having regard to the fact that the word is more properly understood as *Strīdhana* than by any of its English equivalents, the original word has been retained in the translation

4 *Shri Narayn vs Janki Prasad*, 34 All 508 See *Govindya vs Pappunayyengar* 4 Mad 1/20-22 (F B) *Sutaray Thakoor vs Chauder Musi Thakoor* 8 Cal 17

subtracted, as also their special additional share as laid down by Āpastamba¹ 'And the furniture in the house' The ornaments, are the "wife's (property)'

Sūlapāni

5

Yājñavalkya, Verse 115

Yad, 'If &c' If the father, by his wish makes them (the sons) partakers of equal shares then the wives also who are without sons should be made partakers of equal shares, to whom *Strīdhana* has not been given by the husband or any other by reason of the text 'Or if any had been given a half has been declared' If however *Strīdhana* had been given, half should be given

Himself, however, if there be (only) one son he should take two shares If he has more than one sons less than two shares As say Śankha and Likhita 'He, if he has one son, should make two shares for himself

15 Similarly also Two shares should he take for himself, when the father 'makes a partition' This text² of Nārada is even to this effect also (115)

1 II 14-8 9

Mr Colebrooke translates 'The furniture in the house and her ornaments are the wife's (property)— this is in accordance with the published 'extracts' of the text of Āpastamba A reference to the text of Āpastamba itself however points to a different state of things This text occurs in the 14th *Kāṇḍa* of the 2nd Book of Āpastamba's *Dharmasūtra* This *Kāṇḍa* treats of the *Dāyasthāna* or "Distribution of heritage" From § 1 to 6 the general line of heirs is mentioned § 5 mentioning the king as taking by escheat Then from § 6 begin special rules of inheritance, and § 7 and § 8 give the special right of the eldest son to certain items of property, § 9 mentions the wife's claim to special property and § 10 modifies it to some extent The text quoted in the Mitākshara is part of § 8 and 9 Paras 7, 8, 9 and 10 run thus

"In some countries, gold, black cattle, black produce of the earth is the share of the eldest (7) The chariot, and the furniture in the house according to some § (8) The share of the wife consists of her ornaments, and the wealth of the *yūth* That, however, is opposed to *Sāstra* (9)

It will thus be seen that 'the furniture in the house' in the passage from Āpastamba forms part of § 8 which (together with § 7) exclusively mentions properties which go to the eldest son, while it is in para § 9 alone that a reference to the ornaments of the wife is made The translation given above and the punctuation are in accordance with this reading of the text

(11) To the two alternatives before stated, viz, "and either separate the eldest with the best share or (if he choose) all may be (made) equal sharers" (II 114 p 994 l 9 above), the Author propounds an exception

Yājñavalkya, Verse 116 (1)

5

Of one who is able and who is not desirous of having any share, the separation may be effected by giving (him) a trifle

Mitāksharā —(12) To one who is himself competent to earn wealth, and anihamānasya *who is not desirous of having any share* from his father's wealth : *e*, who does not wish to have any share, anything, whatsoever, : *e*, *kuñchit* *a trifle* an article of no value may be given and *prthak kṛyā*, *separation effected* : *e.*, the division may be (thus) completed by the father, so that the children, or other heirs of that son, may have no future claim of inheritance 10 .

(13) By the text "or the eldest with the greatest share" the distribution of greater and less shares has been shown To forbid, in such a case, an unequal partition made in any other mode than that which renders the distribution uneven by means of deductions (of the special shares) such as are dictated by *Sāstra* the Author adds 15

Yājñavalkya, Verse 116 (2).

20

A partition made by the father among sons separated with greater or less shares, if (it be) according to *Dharma*, is pronounced valid.

Mitāksharā —(14) Of the sons *vibhaktānām separated* *pyūnādhu*, with a *greater or less share* if such an unequal partition be *dharma* made according to *Dharma*, : *e* as dictated by *Sāstra*, then that division, *prkṛta* *made by the father*, is (regarded as) completely made, and cannot be afterwards set aside, this is pronounced, *smṛta* *by Manu* and the rest. If, however (it be) otherwise, it may be set aside even though made by the father As says *Narada* "A father, who is afflicted with disease, or influenced by wrath, or whose mind is engrossed by sensual passion, or who acts contrary to what the *Sāstra* dictates, has no power in the distribution of the estate" 25 30

Vīramitrodaya

Now the Author begins the Chapter on *Dāyabhāga*. Its definition has been given by Nārada¹ "Where a partition of the paternal estate is instituted by the sons, it is called by the learned—partition of the
5 " *Dāya*—a title at law

By the use of the two terms *patrya* 'paternal', *tanayah* 'sons', it is intended to show that it is indicative of only those relations by propinquity who are connected through his own seed. *Vibhāgaḥ*, 'partition
10 i. e. where property is held in common ownership, and when by particular arrangement and the like, that is removed and a restricted ownership is superimposed. *Dāya*, means 'wealth, i. e., wealth which was acquired by reason of relationship to the owner. A share of that is *vibhāga*, 'partition

Here, the Author first states the partition when the father is
15 living

Yājñavalkya Verses 114 115 116

Pitā, 'the father, *chet*, 'if, *vibhagam* 'a partition, i. e., of property of his personal ownership as being either his self acquisition, or property (lost to the family and) recovered by him. *Kuryat*, 'makes,' then
20 *ichchhaya*, 'at his pleasure, i. e., according as he may desire, by giving property more or less even, *sutān*, 'the sons,' he 'may separate *vibhagat*. That says Vishnu² "If a father makes a partition with his sons, he may "dispose of his self acquired property as he likes. Manu³ also "When
25 "the father acquires ancestral property which was unrecoverable, the "property he need not divide with his sons if he does not (so) desire, it is his self acquired. The father may leave such recovered property (which was lost), but in regard to other property, when the father makes a partition, *sarve* 'all, the sons, should be the participators of equal shares

30 In regard to the eldest, 'with the eldest son's share &c. together with a tenth or a twentieth part, he should divide

Of the sons, moreover, the shares should be made equal to his

On the other hand, however, of the father who makes the partition, of the wives for whom *bhūtrā nā swasūrenā va* 'either by (their) husband or by (their) father in law, *na strīdhanam dattam*, 'no *strīdhanam* had
35 been given, those wives, and the wives who have *strīdhanam*, should be made participators of equal property, or should be given shares from the

divided property. If, however, in pursuance of the text of Nārada¹ viz.,
"Two shares should he take for himself, when the father makes a
"partition," or in pursuance of the text of Hārīta viz., "Or after
"dividing a small portion, he should take the largest and remain," he
(the father) takes a double or a very large share for himself, then from 5
his own share itself, 'they should be made partakers of equal portions'

Saktasya, 'of one who is competent' i.e., who is himself competent
to make acquisitions, and from the ancestral property, *anhamdasya*,
'who is not desirous of having (any share), i.e., who does not wish,
to such a son, some small share, such as a *prasāda* of rice or the like, for 10
meeting the objections by his son, should be given by the father, and
by the brothers also, *prthak kṛiyā*, 'the separation should be effected',
i.e., the partition should be made

Of those who have been separated with the assignment of more or
less i.e., unequal property, even such, a partition as made by the father is 15
pronounced to be 'legal, *dharma*' Therefore one should not raise object-
ions at a later time. As for the father, by reason of the same being
disliked by the people, such a partition is certainly, illegal. This is the
meaning. *Vide Āpastamba*² "After having gladdened the eldest son
"by some (choice portion of his) wealth, during his life time, he should 20
"divide his wealth equally amongst his sons, 'by some property' i.e., by
a choice portion of his property. By the particular mention of *ya ut*,
'during his life time,' he intends that after he is dead, the wife does not
get a share (114-116)

Sūlpāni

21

Yājñavalkya Verse 116

Śaktiḥ, 'Able &c.' One who by reason of his learning &c. is com-
petent to earn and has no desire for the common property, such a one
should be made separate by the father after giving him a title such as
a rice-field, or the like for obviating any disagreement by his sons in 1
aftertime

Of those, however, who have been made separate with more or less
by reason of his having been made by the father, that itself is (according
to) law. In such a case no disagreement should be permitted in after-
time (116)

13

[Colebrooke Sect. III.]

*PAOR 78.

[Partition after the father's decease.]

(1) The Author next propounds another period of partition, other persons as making it, and a rule respecting the mode :

Yājñavalkya, Verse 117 (1).

The sons should divide, after the parents, both the assets and the debts, of them equally.

Mītākṣharâ :—(2). *Pitroh, of the parents i. e., of the mother and the father, ūrdhwam, after, i. e., after the death.* Thus the period (for partition) is shown. By (the expression the) *sutāh, sons*, the persons who make the distribution are indicated. By (the expression) *samam, equally*, the rule as to the mode (of partition) is indicated, *i. e., in equal shares only*, they should divide the assets and the debts.

(3) But Manu, having premised¹ "after the death of the father

An Objection. "and of the mother" and having declared,² "The

"eldest alone may take the whole paternal estate; "the others should live under him just as (they lived) under their father";

has said³ : "The additional share (deducted) for the eldest is the

"twentieth part (of the heritage), as also that which is the best of all

"chattels; for the middlemost, half of that, but one-fourth for the

"youngest". Of the entire property the twentieth portion, as also that

which is the best of all the chattels, that must be given (by way of

deduction) to the eldest; half of that, a fortieth part, and a middling chattel, should be allotted to the middlemost, and a quarter of

it—the eightieth part, and an article of low⁵ quality should be given to the youngest, and thus Manu has exhibited a distribution with deductions among brethren separating after the death of the mother and the father.

Moreover,⁶ by the text⁷. "But if there be no deduction, the allotment of shares shall be in this manner : Let the eldest son take one

1. See *Jotirm vs. Nathu* 31 Bom. 54—8 Bom. L. R. 634.

2. Ch. IX. 104.

3. Ch. IX. 105.

4. Ch. IX. 112.

5. Colebrooke Tr. "worst chattel".

6. From here begins the last part of the objection against an "equal portion."

7. Ch. IX. 116-117.

share in excess and the next born one half share more and the younger ones one share each, thus is the law settled, thus by allotting to the eldest two shares to the (brother) next born a share and a half and to those born next after one share each even when without deductions he has directed an unequal partition among brethren separating after the demise of the parents 5

And when a division is made during the father's life time the Author (i.e. Yājñavalkya) himself has exhibited an unequal distribution (by the text) " Or the eldest with the best share &c (II 114 p 182 l 21 above) 10

Hence an unequal partition is admissible even at all times. How then is a restriction introduced requiring that sons should divide only in equal shares ?

(4) The question (put) here is thus answered. True this unequal partition is found in the *Sastra* still however, as 15
The Answer it is abhorred by the world it must not be practised since that is forbidden by the text¹. One must not practise that which procures not the celestial bliss and is abhorred by the people even though it be allowed by law. As for example notwithstanding the direction in the text² Let him offer a big bull or a big goat to 20
a venerable priest still as that is abhorred by the people it is not practised. Also as 'Slay a barren cow as a victim consecrated to Mitra and Varuna' notwithstanding this direction as to the slaughter of a cow in the text still as it is abhorred by the people that is not practised 25

(5) It has also been said³. As the law relating to appointment "and also the rule regarding the slaughtering of a cow as a victim is not now in use, so also is the partition with deductions not current now."

(6) Āpastamba, also having delivered his opinion (in the text⁴) " He (i.e. the father) should, during his life time divide his wealth 30

1 Yājñavalkya I 106 l 365 II 4 above

2 Yājñavalkya I 109 p 306 II 30 3. above

3 In a text of *Jatya*—(see Balamihatta p. 139) The meaning is that there are two *Jāts*—one ordained by the *Vedas* and the other ordained elsewhere than *Vedas*. See Balamihatta and *Sukla Sm.* I 114 4 II 6 14 1

equally amongst his sons' and by the text¹ "Some hold that the eldest is the heir" having [replied, as the opinion of some, the succession of the eldest to the entire estate, and having exhibited as the opinion of others the distribution by (the method of) deductions having regard to (the usage of) particular places:—² "(In particular countries), gold black lime and the black produce of the earth belong to the eldest. The chariot and the furniture in the house are the father's and according to some ornaments as also property (received by her) from kinsmen belong to the wife" has refuted it as being forbidden by *Sāstra*, and has himself pointed out the prohibition in the *Sāstra* thus³. It is recorded in Scripture without distinction that *Mamū* distributed his heritage among his sons"

(7) Therefore unequal partition though noticed in the *Sāstra* still as it is disapproved by the world and is contrary to Scriptures it should not be practised. And for this reason the restrictive rule is laid down, vi (the brethren) should divide only in equal shares'

(8) It has been declared that sons may part the effects after the death of the mother and father. There the Author states an exception in regard to the mother's (separate) property

20 Yājñavalkya Verse 117 (3rd quarter)

Of the mother's (property) the daughters (shall take) the residue (after the payment) of debts

25 Mitākṣharā—(9) *Matrē the Mother's property, duhitaro, the daughters shall divide nachchhesham the residue of debt i.e. the residue (remaining) after the discharge of the debts contracted by the mother. Hence, the purpose (of the preceding part) of this text is that when the mother's assets are equal to or less than her debts the sons may (take and) divide them* (10) The⁴ meaning is this. A debt incurred by the mother, must be discharged by the sons only and not by the daughters but the

1 *Āpastamba* II 6 14 8 2 *Āpastamba* II 6 14 9 3 *Āpastamba* II 6 14 11

4 This is a passage from the *Taittiriya Veda*—*Balamhastta*. There is a mis-
take in the print of the text for सप्तः पुत्रेभ्यः read सप्त पुत्रेभ्यो पुत्रेभ्यः

5 See *Vithalrao vs Ramrao* 24 Bom 317—2 Bom L R 164 166

daughters shall take the residue of her assets after the payment off of her debts. And this is proper. For by the rule¹: "A male child "is procreated if the male seed predominate, a female child by the "prevalence of the female," as portions of the (body of the) female (parent) abound in the female children, the *Strīdhana* property goes to the daughters, and as portions of (the body of) the father abound in the male children, the father's estate goes to the sons.

(11) Even² there, a special rule has been propounded by Gautama³, "The *strīdhana* property goes to her daughters unmarried, and "(failing them) to the unprovided". The meaning of this is this: If there be a competition of married and unmarried daughters, to the unmarried alone goes the *strīdhana*; and if among the married daughters there be a competition between the endowed and the unendowed (daughters) it belongs exclusively to such as are unendowed. 'Unendowed' means destitute of wealth.

(12) In answer to the question, "in the absence of daughters "who should take the residue of the mother's estate that may remain "after payment of her debts"? the Author adds :

Yājñavalkya, Verse 117 (last quarter)

In their default, the issue (succeed).

Mitākṣharā:—(13) Tābhya, in *their* absence, i. e., of the daughters *pte i. e.*, in *default of* daughters, *anwayah*, *the issue*, i. e., the sons and the like others, should take. This, moreover, was already demonstrated by the text: "The sons should divide equally...after the parents &c." but it is here expressly declared for the sake of greater perspicuity.

1 Manu, Ch III 42

2. See *Bāleśāhara* p. 142

3 Ch XXVIII-22.

4 Cf *Yājñavalkya* II 117. p. 1002 (above).

Vīramitrodaya

Now the Author mentions the partition when the father is dead

Yājñavalkya Verse 117

Pitroh, 'of the parents' : *c*, of the mother and the father, *rkīham*,
5 'assets,' *ṛnam cha*, 'debt also,' *urdhvaṃ*, 'after them,' : *c*, after the death
of the parents, *sutāḥ*, 'sons,' : *c*, the issue *Samān* : *ibhajeyuh*, 'should
divide equally'

Mātur, 'of the mother,' the wealth, her *duhitāro*, 'daughters' also,
equally with the brothers, if a residue remains over after the discharge
10 of the mother's debts, then they should take The debts, the sons
alone should pay

Duhitṛnāmrit, 'in default of daughters,' : *c*, in the absence of daugh-
ters, the daughter's sons, should get the share which would have been
obtained by their mother So says Manu' "But when the mother has
15 "died, all the uterine brothers and the uterine sisters shall equally divide
"the mother's estate To the daughters of those (daughters), to those
"even according to proportion" "Should divide the property," is what
follows In the text of Narada "Of the mother, the daughters, in the
"absence of daughters, the right for an equal share is of the maidens
20 only.' That has been stated by Brahaspati' "*Strīdhana* shall belong
"to the children, the daughter also will be a sharer in it, if she be not in
"coverture, the married, however, gets just a trifle as a mark of honour'
"To the children, : *c*, to the sons 'In coverture' : *c*, married, 'as
a mark of honour' : *c* resulting as an indication of simply res-
25 pectful regard 'A trifle such as a cloth &c Gautama' "The
'*strīdhana*' property goes to the daughters unmarried and (taking them)
'to the unendowed' " 'Unendowed' means childless, unlucky, and
'having a poor husband," so says Ratnakara Manu' "Whatever may be
'the separate property of the mother, that is the share of the unmarried
30 'daughter' *Iaśāṇ* 'separate property,' at the time of marriage,
received from the father and others '*vasistha*' "Now the distribution
'of *dīya* among brothers And those women who have no children, for
'them, until after they bear sons 'women here has connection with
(the word) 'brothers Similarly of a widow about whom there is an
35 expectation for a son a share for a brother's wife should be constituted.

1 CH. IX 102 103

2 XXX 83

3 XXXIII 20

4 IX 102

5 XXXII 40 41

On a son being born to her, that share shall belong to the son. Upon a certainty of the absence of a son, however, that portion should be taken by the husband's brothers and the like.

After the father, says Brhaspati : " In his absence, however, the
"mother shall take an equal (share) to that of a son. The mothers shall
"take equal shares with these, and the maidens a fourth part." 'Mother'
i. e., one having sons. 'Mothers' i. e., the step-mothers without sons.
These are all entitled to a share equal to a son's. Of these, the sister
i. e., the unmarried daughter (of the father) becomes entitled to a
fourth share in the father's property. This is the meaning. 5 10

Vyāsa : " The childless wives of the father, however, have been
"declared to be partakers of an equal share." (117)

Śūlapāṇi

The Author mentions partition after the father's death.

Yājñavalkya, Verse 117

15

When sons, all are of eminent qualities or of inferior qualifications,
then after the death of the mother and the father after making equal
divisions of the father's property as also of the debts, should make the
distribution

What, moreover, has been said by Manu² viz, " Of the eldest, the
"twentieth (part) shall be the additional share," that has a reference to the
youngest when of inferior qualifications. In the case of those with high
qualifications, a prohibition for an additional share having been laid by
himself viz, " There is no additional share from among (brothers)
"equally skilled in their occupations " 20 25

The property of the mother, as may remain after discharging the
debts, the daughters should make equal (divisions) and take. Gautama³
states a special rule : " The Śūdraka is of the daughters, unmarried as
"well as the unendowed " 'Unendowed' i. e., although married, the
childless, the moneyless, the widowed, as also the unlucky. 30

In the absence of these, the issue, i. e., the sons, sons' sons, and the
rest (117)

[Colebrooke Sect. IV]

[Effects not liable to partition.]

(1) The Author mentions things not liable to partition.

Yājñavalkya, Verses 118, 119

3 Without detriment to the paternal estate whatever else is acquired by a man himself, as a present from a friend, as also a nuptial present, shall not belong to the co-heirs (118).

10 Nor shall he, who recovers hereditary property which had been taken away, give it up to (his) co-parceners, nor also what was gained by learning (119).

Mitākṣharā.--(2) *Pitṛdravyāwirodhena, without detriment to the estate of the father or the mother, yat swayamarjitam, that which is acquired by a man himself, maitram, a present from a friend, i. e., obtained from a friend, audwāhikam, a nuptial present, i. e., obtained at the marriage, tai na bhavet, that shall not belong, dāyādānam, to the co-parceners, i. e., the brothers* Any property, whatever, which had descended in succession, *kramāt*, from paternal ancestors, *brtaṃ* and, had been taken away by others, and through inability or any other cause, had remained unrecovered by the father and the rest, he among the sons, who recovers it with the consent of the rest, *tad dāyādebhyo na dadyāt, shall not give up to (his) co-parceners, i. e., to the brothers or the rest, the recoverer alone shall take it* (3) Here, if it be land, the recoverer takes the fourth part, but the remainder, however, belongs to all equally. as says Śāṅkha "If one alone recovers land (inherited) in regular succession and which had been formerly lost, having first given him a fourth part, the rest¹ may

1 Including the acquirer himself—Balambhatti.

The rule here stated "was intended to apply strictly to hereditary property of which the members of the family had been violently or wrongfully dispossessed or adversely kept out of possession, for a length of time — "Property unjustly detained which could not be recovered before" is the import of Manu IX. 207," *Puṣpachy vs Annaswami*, 5 Mad H C R. 150 at 157 See also West and Bühler on Hindu Law, p. 71 (3rd Edn) Accordingly it was held, in *Dajaba vs Trimbāl*, 24 Bom 106, where certain family property was allotted to a member of one branch of the family in virtue of a compromise and the same was purchased by a member of another branch with his own money not forming part of the joint family property, that the rule stated in the text here did not apply to such a case.

'divide the remainder according to their proper shares" (4) In the expression, 'In regular succession' the word 'inherited' is understood (5) Likewise yalabdham *what was gained vidyayā, by learning* i.e., by the study of the *Vedas* or by teaching or by expounding the meaning of the *Vedas*, that also he need not give up to his co parccners, but the acquirer himself should alone take

(6) Here, moreover the expression 'without detriment to the paternal estate whatever else is acquired by a man himself' must be everywhere¹ understood Without detriment to the paternal estate what was obtained from a friend, without affecting the paternal estate 10 what was obtained as a nuptial present, without expenditure of ancestral property what was recovered of the hereditary property, without use of the paternal wealth what is gained by learning and thus it is to be connected with each member of the sentence in this manner And hence, at the charge of the patrimony, what is obtained from a 15 friend as the return of an obligation conferred, what is received as a nuptial present at a marriage concluded in the *Āsura*² form or the like, and what is recovered of the hereditary estate by the expenditure of paternal wealth and what is gained by learning acquired at the expense of ancestral wealth all that must be shared in by all the 20 brethren and also by the father (7) Moreover,³ from the very fact that the clause "without detriment to the paternal estate is in every

1 i.e., with all *सर्वे* i.e., must be taken by implication to be predicated of each kind of individual acquisition enumerated immediately further on

2 At the *Āsura* form of marriage receipt of money by the father or his kinsmen from the bridegroom is the principal feature

3 The reading here adopted is in accord with that of the *Sūtradhara* (see Collections Vol II p 50 ll 7-10) The commentator says that as these acquisitions (e.g., friendly gifts &c.) made at the charge of the patrimony are liable to be shared so anything obtained as a mere gift pure and simple and not being included among these acquisitions must be subject to partition though procured without the use of the paternal goods

The author of the *Bāṣanānti* gives another reading *न तथा* (na tatha-) 'not thus', and according to this reading donations pure and simple will be excluded from the common partible property Even there the Author notices the reading given and adopted in the text here (See *Bāṣanānti* Sk p 144 ll 19-20) *उचिन्नान्ति* पार

place understood, even what is obtained as a gift,¹ without waste of the patrimony, is liable to partition. But, if that were not understood with every member of the text, it (i.e., the text) need not have commenced by specifying "gifts from friends," "nuptial presents" and other similar acquisitions.

* Page 80.

(8) It may be urged that the enumeration of friendly gifts and similar acquisitions is pertinent, as showing that gains are exempt from partition, even though obtained at the expense of the patrimony. To this the reply is: Were it so, it would be inconsistent with well-established usage,² and also would contradict the text of Nârada³ in regard to gains of science, i.e., "He, who maintains the family of a brother while he was acquiring learning,⁴ shall take a share in the gains of learning, be he ever so ignorant (himself)." Moreover, the definition of wealth, not participatable, as being acquired by learning is propounded by Kâtyâyana⁵ thus: "that wealth

1 अर्पित (Prati graha)—is a gift pure and simple

2 समुदाय—विदित "the received practice of unerring persons" Colebrooke.

3 Ob XIII 10

4 विद्यामधिगच्छत—अधिगच्छ is to acquire—a free translation would be—while he was receiving education. The meaning is that such knowledge would not be knowledge acquired exclusively by the acquirer alone, but jointly with the help of a brother who took care of his family. And this is a fair rule.

5 This definition of Kâtyâyana is not exhaustive. See *Durga Dut Joshi vs Ganesh*, 32 All 305 at p 312 and also observations in Ghose's *Hindu Law*, Second Ed. p 520-521. The result of the rulings on this text is—that the fruits of an ordinary elementary education could not be regarded as the gains of science acquired at the expense of ancestral wealth. *Naikaram vs Retachand*, 20 Bom L. R. 666, 45 I A 41.

See *Paulsen Vakil Chetty vs Surya Chetty*, 1 Mad 262 s c 4 I A 100-118. *Lachman Kuar vs Debi Prasad*, 20 All 435 approving *Lalshaman vs Jamsalal* 6 Bom 225 and *Krishnaji vs Wero* 15 Bom 32.

The detriment to the paternal wealth must be of an appreciable character, the mere fact that some patrimonial wealth was used for some time will not convert self-acquisition into a joint property. *Bachcho Kuar vs Dharma Das*, 28 All 347.

Gains of prostitution were held to be self acquisition. *Bodogam vs Sworman*, 4 Mad 330. A Vakil's gains were also held to be his self acquisition. *Durvasulu Gantharudhu vs D Narasimmaiah*, 7 Mad. 47. See also *Dhanuldasree Lal vs Ganpat Lal* 10 Cal 122 and *Bhagurithobai vs Sudashee*, Bom H O F J. (1880) page 126.

' which is gained by means of learning acquired from another with the
 "help of maintenance received from strangers is termed acquisition
 "through learning" (9) Moreover, if the expression "without
 "detriment to the paternal estate" be taken as a separate clause, any-
 thing obtained by gift would be exempt from partition contrary to
 established usage (10) This very thing has been made clear by
 Manu: "What one acquires by his labour without using the patri-
 "mony, he need not give up to the co heirs, nor what he has gained
 'by science" (11) *By labour*—by service, war, or the like

(12) Indeed it is unnecessary to declare, that effects obtained

An objection as presents from friends, and similar acquisitions
 made without using the patrimony, are exempt
 from partition, since there was no rule directing a partition (of these)
 It is a well known rule that what is acquired by one belongs to him only
 and to no other person While a prohibition (necessarily) implies a
 possible² supposition of the contrary

(13) Here a certain writer suggests the existence of a previous
 supposition thus: 'Whatever property the eldest acquires after the
 'father's death a share of that belongs to the younger brothers pro-
 vided they have duly preserved learning," by interpreting this text,¹
 to mean—that 'if the eldest, youngest, or middlemost (acquire property)
 whether after the death of the father or when he is not dead' (a share
 shall accrue) to the rest whether younger or elder' grounds do exist
 for inferring a supposition that gifts from friends and the like are
 hable to partition, whether the father be alive or dead, and so this⁴ is
 prohibited

(14) The argument is erroneous Here there is no prohibition

The answer of anything arising by inference, but an explana-
 tory⁵ repetition of what was demonstratively true

1 Ch IX 208 Lord Sumner has summed up the entire case law in *Coltuck v
 Hukmchand* 48 1 A 162 See Act XXX 1930 under which all self acquired ones
 have been made indivisible The Act has according to § 2 (b) retrospective effect

2 अक्षरान्तर—or things अक्षरान्तर—are things previously known or assumed as established

3 Of Manu Ch IX, 204

4 i.e. the rule which may be set up as arising from inference or implications

5 अक्षरान्तर—An explanatory repetition of or reference to what is already men-
 tioned

for most of the texts in this chapter are merely¹ repetitions of what is already well known to the world

- (15) Or you may be satisfied with considering this as an exception to what is suggested by the text 'All the brethren shall be
 5 "equal sharers of that which has been acquired by them in concert"
 And it is therefore a mere error to deduce such a suggestion from the word 'eldest' and the like in the text² before cited 11: "What
 "ever property the eldest acquires after the father's death &c"
 Therefore this passage must be interpreted as an exception to the
 10 general doctrine, deduced from texts concerning gifts from friends and the rest 11: that they are exempt⁴ from partition both before the father's death and after his demise

- (16) So, other things exempt from partition have also been
 15 enumerated by Manu⁵ 'Clothes, a vehicle an ornament, cooked food, water and women (property intended for acts which help) the acquisition⁶ and preservation of property as well as the common way, are declared not 'liable to partition' (17) The indivisibility
 attaches only to clothes which are not worn What is worn by each
 20 person belongs exclusively to him As to what was worn by the father, these should be given by the brethren partitioning after (the death of) the father, to the Br hmana who partakes of the food at his obsequies As says Brhaspati⁷, The clothes ornaments, bed, and
 similar articles belonging to the father, as also his vehicle and the

1 लोचस्मिन्स्वेव अनुवादकादेव—Balambhatta thus explains the two सूत्र — 'The first excludes the suggestion that it was established by the rule of Śāstra and the second excludes the suggestion of a prohibition

2 Of Brhaspati Ch XXV 14 —Balambhatta

3 s s The text of Manu IX 204 cited above at p 1011

4 There is a mistake in the print of the Sanskrit on page 80 l 16 Instead of वा विभाज्यते read वा विभज्यते

5 Ch IX 219

6 अय is the acquisition of something not in the possession of the owner (अयाय अयम्) and अय is the preservation of that which has been acquired (अयम् अयम्) As sacrifices and other pious acts further such acquisitions and preservations Colebrooke has translated the expression as sacrifices and pious acts This term has been explained by Vijnanesvara himself further on (see p 1014 ll 9 25)

7 Basemont *Shāstaram Balakrishna vs Rama's Gopal* 47 Bom 389

8 Ch XXV 85

But women kept¹ in concubinage (by the father), such as adulteresses² and others, although even in number, must not be shared by the sons, *vide* the text of Gautama³ "Nor shall there be a partition of "women connected (with the father or other members of the family)."

- 5 *Page 81 (23) The term *Yogakshema* is a conjunctive compound word made of (the two words) *Yoga* and *Kshema*. By the word *Yoga* is signified a cause of obtaining some thing not already obtained—: *e*, a sacrificial⁴ act to be performed with fire consecrated according to (the rules of) *Śruti* and *Smṛti*.
- 10 By the term *Kshema* is denoted an auspicious act which becomes the means of conservation of what has been obtained, such as the giving of alms elsewhere⁵ than at the altar, or the making of a tank or a garden and the like. Both these, though ancestral, or though accomplished at the charge of the patrimony, are indivisible as Laugākṣhi declares: "The learned have named a conservatory act *Kshema*,
15 "and a sacrificial one *Yoga*; and both these are pronounced indivisible, "as also the bed and the seat"⁶ (24) Some hold, that by the compound term *Yogakshema*, those who effect sacrificial and conservancy acts are intended *e* *g.* the king's counsellors, the stipendiary priests, and the
20 rest. Others say, parasols, cow-tails weapons, shoes and similar things, are meant. (25) *The Commonway*, or road of ingress and egress to and from the house, garden, or the like, is also indivisible. (26) As to the exclusion of land from partition as stated by Usana (in the text) "sacrificial gains land, written documents, prepared food, water,

1 अवस्था—This term occurs later on at II-290 and Vijnanesvara explains it thus "A female slave kept in the house and restrained from having intercourse with other men as a safeguard against any breach in the service" दास्य रसमिना कुम्भपान्तिमुदासाय इह एव स्थानमभिषेरे इत्यन्तरमेवा निरुद्धा अवस्था. Also see *Mat. Handeri vs. Narmada*, 1 Luck. 184, and *Raj. Mughlan vs. Ben. Naguben*, 53 I. A. 153.

2 स्त्रीविवाहः See Narada Ch. III 49-53

3 Ch. XXVIII, 47

4 योग-योग is obtaining something not secured (अप्राप्त्य प्रापणम्) and क्षेम is the preservation of that which has been secured (प्राप्त्य परिरक्षणम्)

इष्टार्थ—The two kinds of acts which are the means of acquisition and preservation are called इष्ट and कृत and are thus defined

इष्ट—अग्निहोत्रं तपः सत्यं वेदानां चैव धारणम् । आतिथ्यं वैश्वदेवञ्च इष्टमित्यभिधीयते ॥

कृतं—वासीकपतङ्गाणादिद्वेषावतनानि च । अक्षयदानमारामं पूर्णमिषमभिधीयते ॥

० कनिर्विन्दम् "Digging an outer sacred well" would also be another way of translating it and may suit the context

6 असनम्—Colebrooke translates it as "chair"

"and women, are indivisible among kinsmen even to the thousandth
 "degree," that has a reference to sons of a *Brāhmaṇa* by women of the
Kṣatriya or other castes, *Vide* the text¹ "Land obtained by accept
 "ance of donation, must not be given to the son of a *Kṣatriyā* or of
 "any other wife of an inferior tribe, even if the father give to such 5
 "sons, on his death, the son of the *Brahmanī* wife may resume it'
 (27) *Sacrificial gains*, i.e. acquired by officiating² at religious sacrificial
 performances (28) What is obtained through the father's favour
 will be subsequently³ declared exempt from partition The supposit
 ion, that any thing, acquired by transgressing restrictions regarding 10
 the mode of acquisition, is indivisible, has been already refuted⁴
 (29) It is (thus) settled that whatever is acquired at the charge of
 the patrimony, is subject to partition But in such a case, the acquirer
 shall have a double share under the text of *Vassthī*⁵ "And if any
 "one, among them,⁶ has made himself alone an acquisition, he may 15
 "take a double portion of it."

Vīramitrodaya

Now the Author states property which is not liable to partition

Yājñavalkya Verses 118, 119

Without detriment to i.e. without spending the property of the parents, 20
 what property otherwise, i.e. such as by trading in merchandise and like
 means has been acquired by himself, what moreover was *matram* 'a
 friendly gift,' i.e. obtained from a friend, and also *autvāhikam* 'nuptial
 i.e. obtained at a marriage, *fat*, 'that, is not liable for distribution among
 other *dāyādānāt*, 'co-parceners'. Even property which had descended 25
 in succession from the ancestors, such as the father, grandfather, &c.,
 and having been taken away by others, and was not recovered by the
 father &c. owing to incapacity, the one who recovers by his own capacity,
 such property he should not give to the co-parceners That has been
 declared by *Kātyāyana*⁷ "With the help of maintenance preferred by 30

1 Of *Bṛhaspati* Ch. XXV 30—*Balamhātta*

2 *यानन* (causal) i.e. by causing a sacrifice to be performed by another

3 II 123 (1) 4 See p. 987 II 20 etc 5 Ch. XVII 51

6 i.e. brethren separating

7 In a recent case a special (half) share was given to a member in view of his
 important services to the family *Am. thachari vs. Arachaswami* (1938) Mad. 410

8 Verse 867

"strangers when the learning was acquired elsewhere, wealth obtained on account of such learning is termed acquisition through learning." Here also, according to *Prakāśa*, the basis of indivisibility is the absence of any connection with the paternal estate, that is not proper; because the
5 fault of uselessness would arise by the separate mention.

This, moreover, is not liable to partition when (his) family is not maintained by the co-parceners during the period of the acquisition of learning by him; if not, it is certainly divisible, vide this text of *Kātyāyana*¹: "He, who maintains the family of a brother while he was
10 "acquiring learning, shall take a share in the gains of learning, be he "ever so ignorant (himself)".

By the use of the first *cha* is indicated what was obtained respectfully at the time of the *Madhuparka* (reception) as stated by *Manu*. By the use of the word *cha* a second time, however, are added "What
15 "was given by the grandfather, or by the father out of affection, that "should not be taken away from him, as also that which may have been "given by the mother", as stated in this text of *Vyāsa*, as also that which the Author will state hereafter. By the use of the word *eva*, 'only', twice, are excluded (both those kinds) by regard to their having no connection
20 with the paternal wealth. By the use of the word *tu*, 'however', the co-operation of any other co-parcener in the recovery is excluded. (118, 119).

Śūlapāṇi.

The Author mentions property not liable to partition
Yājñavalkya, Verse 118

25 Without injury to the paternal estate, by husbandry and like other means, what has been acquired elsewhere, acquired through friendship, or received at marriage, that is not capable of distribution among the sharers (118).

Yājñavalkya, Verse 119

30 Property descended from the father, grand-father &c., and lost by the father through the absence of strength, he who recovers it back, need not give it back to the sharers if he is unwilling. Similarly what is gained through learning he should also not give. *Kātyāyana* mentions gains of learning: "With maintenance offered by another, when a
35 "man acquires learning, what is obtained in due course with this, that is "called gains of learning" (119).

(30) The Author propounds an exception to this rule

Yājñavalkya, Verse 120 (1).

But if the Common stock be improved, an equal division is ordained.

Mitākṣharā :—(31) Among unseparated brethren, sāmānyarthasya, *if the common stock, samutthāne, be improved, i. e., augmented by any one of them through agriculture, commerce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.* 5

Vīramitrodaya

To this the Author mentions an exception

10

Yājñavalkya, Verse 120 (1)

In the money-earning business carried on by all the brothers together in common, however, such as in the form of agriculture, trading in merchandise &c., all have an equal share. By the use of the word *tu*, 'however,' the Author discriminates the indivisibility in the case of acquisitions made without the use of the paternal wealth. 120 (1). 15

[Colebrooke, Sect V.]

[Equal rights of father and son in ancestral property.]

(1) The distribution of the paternal estate among sons has been shown. The Author next propounds a special rule concerning the division of the grandfather's effects by grandsons 20

Yājñavalkya, Verse 120 (2).

Among claimants by different fathers, the allotment of shares shall be by regard to the fathers.

Mitākṣharā :—(2) Although grandsons have by birth a right of ownership in the grandfather's estate equally¹ with sons, still the distribution of the grandfather's property must only be adjusted² through their fathers and not with reference to themselves. The meaning here expressed is this: when unseparated brothers die, 25

1. अक्षिप्तम्—Without any discrimination or distinction.

2. शिष्टम्—i. e., by regard to their father through whom they are connected with the remoter ancestor or with the family generally. द्वारम्—means a door—medium.

“strangers when the learning was acquired elsewhere, wealth obtained on account of such learning is termed acquisition through learning.” Here also, according to *Prakāśa*, the basis of indivisibility is the absence of any connection with the paternal estate, that is not proper; because the
5 fault of uselessness would arise by the separate mention.

This, moreover, is not liable to partition when (his) family is not maintained by the co-parceners during the period of the acquisition of learning by him; if not, it is certainly divisible, vide this text of *Kātyāyana*¹: “He, who maintains the family of a brother while he was
10 “acquiring learning, shall take a share in the gains of learning, be he “ever so ignorant (himself)”.

By the use of the first *cha* is indicated what was obtained respectfully at the time of the *Madhuparka* (reception) as stated by *Manu*. By the use of the word *cha* a second time, however, are added “What
15 “was given by the grandfather, or by the father out of affection, that “should not be taken away from him, as also that which may have been “given by the mother”, as stated in this text of *Vyāsa*, as also that which the Author will state hereafter. By the use of the word *eva*, ‘only’, twice, are excluded (both those kinds) by regard to their having no connection
20 with the paternal wealth. By the use of the word *tu*, ‘however’, the co-operation of any other co-parcener in the recovery is excluded. (118, 119).

Sūlapāṇi.

The Author mentions property not liable to partition
Yājñavalkya, Verse 118

25 Without injury to the paternal estate, by husbandry and like other means, what has been acquired elsewhere, acquired through friendship, or received at marriage, that is not capable of distribution among the sharers (118).

Yājñavalkya, Verse 119

30 Property descended from the father, grand-father &c., and lost by the father through the absence of strength, he who recovers it back, need not give it back to the sharers if he is unwilling. Similarly what is gained through learning he should also not give. *Kātyāyana* mentions gains of learning: “With maintenance offered by another, when a
35 “man acquires learning, what is obtained in due course with this, that is “called gains of learning” (119).

(30) The Author propounds an exception to this rule

Yājñavalkya, Verse 120 (1).

But if the Common stock be improved, an equal division is ordained

Mitākṣharā :—(31) Among unseparated brethren, sāmānyarthasya, *if the common stock, samutthāne, be improved, i. e., augmented by any one of them through agriculture, commerce, or similar means, an equal distribution nevertheless takes place; and a double share is not allotted to the acquirer.*

Vīramitrodaya

To this the Author mentions an exception

Yājñavalkya, Verse 120 (1)

In the money-earning business carried on by all the brothers together in common, however, such as in the form of agriculture, trading in merchandise &c., all have an equal share. By the use of the word *tu*, 'however,' the Author discriminates the indivisibility in the case of acquisitions made without the use of the paternal wealth. 120 (1).

[Colebrooke, Sect. V.]

[Equal rights of father and son in ancestral property.]

(1) The distribution of the paternal estate among sons has been shown. The Author next propounds a special rule concerning the division of the grandfather's effects by grandsons

Yājñavalkya, Verse 120 (2).

Among claimants by different fathers, the allotment of shares shall be by regard to the fathers.

Mitākṣharā :—(2) Although grandsons have by birth a right of ownership in the grandfather's estate equally¹ with sons, still the distribution of the grandfather's property must only be adjusted² through their fathers and not with reference to themselves. The meaning here expressed is this: when unseparated brothers die,

1. *समं*—Without any discrimination or distinction.

2. *पितृणां*—i. e., by regard to their father through whom they are connected with the remoter ancestor or with the family generally. *द्वारं*—means a door—medium.

- leaving¹ male issue and one has two sons, another has three sons and a third has four sons, and thus the number of sons (of these) is unequal, then the two receive a single share which appertained to their father, the other three also take a single share appertaining to their father, and the (last) four also obtain one share due to their father. So, if some of the sons be living and some have died leaving male issue, the same method should be observed, the surviving sons take their own allotments, and the sons of their deceased brothers receive the shares of their own fathers respectively. Such is the adjustment prescribed² by the texts (120)

Viramītrodaya

Now in the grandfather's property the Author mentions the share of the grandsons through different fathers

Yājñavalkya, Verse 120 (2)

- Where one has one son, another has four sons, there, two allotments should be made, and of these one share should be taken by (one who is) the only son of his father, while by all the four sons of the other together should be taken the other share. By the use of the word *tu*, 'however,' it discriminates the shares for the grandsons by their number 120 (2)

Sūlapāni

Yājñavalkya Verse 120

- When, of the common stock, there occurs an increase by means of agriculture trade in merchandise &c, then the distribution shall be equal. In such a case the apportionment of an additional share should not be made on the consideration that 'he has brought in much more', or the like. This is in regard to the unlearned, so says Manu³ "If the property belonging to those all of whom are unlearned be acquired by agriculture

1 Lit. after procreating sons

2 i. e., This is the meaning of the text when the claimants are removed by more than one degree from the common ancestor, the division shall be by reference to the root of each group, and not by regard to the several individual claimants themselves. In other words the distribution will be *per stirpes* and not *per Capite*.

This text has been referred to in several cases, see *Ganga vs Chandrabhagabai* 32 Bom. at 284 *Kalpataru vs Semappa* 33 Bom. at 681 *Dela Prasad vs Thakurial* 1 All. at p. 111 *Appaji vs Panchandra* 16 Bom. at 33, 34

3 Ch. IX. 205

"in such a case the distribution shall be equal in the property which is not paternal; this is the rule". 'Agriculture' i.e., tilling the soil. "Not paternal" i.e., in the property other than that acquired by the father.

Anekpratyān, i.e., those who are the sons of different brothers; of these, although they be even or odd in number, (still,) when the grand-father's property is being distributed, whatever was the share of their father, that alone would be (their share), and not that the determination of the share be distributively for each. (120).

(3) If the father be alive and separate (from the grandfather), or

if he have no brothers, (it may be urged that) the grandson would not have a (right to) partition in the grandfather's estate since it has been

An objection anticipated.

directed that if the father be deceased "shares shall be allotted in the "right of the father"; or admitting a partition to take place (it may be urged that) it should be made according to the pleasure of the father, like a distribution of his own acquisitions: to obviate this doubt, the Author says

Yājñavalkya, Verse 121.

Land which was acquired by the grandfather, a corrody, and also chattels; in these the ownership of the father and also of the son is the same.

Mātākṣharā : (4) Bhūti, land, a rice field or other ground. Nibandhaḥ, corrody, i.e., from each bundle of leaves so many leaves; similarly so many nuts from an orchard of areca—as has been

* Page 82. defined (before). Drawyam, chattels, gold, silver &c.

(5) Such as was acquired by the paternal grandfather, through acceptance of gifts, or by conquest or other means; tatra pituḥ putrasya cha swāmyam, in these the ownership of the father and of the son, is universally known,⁵ and bearing this in mind

1. शेषस्य वैवाहे द्वये विवाहे नास्ति—which Colebrooke translates as: "a partition of the grand-father's estate with the grandson would not take place."

2. Colebrooke translates this as "from a plantation of betle pepper".—But the original does not specify any kind of 'leaves.' The general word तत्र (parṣa) is used

3. समुत्पन्न—The word उत्पन्न is not conjoined to the areca tree alone.

4. "अमुकस्तु सुमात् वदन्तरत्ने ब्रह्मदास्ति : कले वार्षासिकायाश्च पट्टिकालोप्रपूयते ॥" —भट्टिर्भट्टः

5. i.e., in com. on Yājñavalkya Āchārādhyāya I. 318 p. 580 H. 4-7.

6. See Telang J. in Appaji Narkar vs Ramchandra 16 Bom. 29 (F. B.) at p. 37 and Sargeant C.J. at pp. 33-34; also Kieruppi vs Santara Narayan 27 Mad. at p. 312.

a partition takes place; *for*, *hi*, i. e., since, the right is *sadṛśam*, *the same*, i. e., equal (or alike); therefore it is not that partition can be made only by the father's choice; nor is there a double share for the father.

(6) Hence also it is ordained by the preceding text, (II. 120) that

5 "The allotment of shares shall be by regard to the fathers", although the right be equal. (7) The text (II. 114) "when the father makes

"a partition" relates to property acquired by the father himself. So

also the text¹: "Two shares let the father keep for himself, when making a partition" relates to self-acquisitions. The dependence of

10 sons, as affirmed in the following passage²: "While both parents live,

"the control remains, even though he³ has arrived at old age", must

relate to effects acquired by the father or mother. Similarly the text⁴:

"They⁴ are not masters, while their parents are living." (8) Thus,

while the mother is capable⁵ of bearing more sons, and the father

15 retains his worldly desires, even when the father does not desire

partition, a distribution of the grandfather's estate does nevertheless :

take place by the will of the son. (9) So likewise, if the unseparated

father is making a donation, or a sale, of effects inherited from the

20 grandfather, the grandson has even the right of prohibition. But if

the effects were acquired by the father, he has no right of prohibition,

as he is dependent on him. On the contrary he must give his consent.

(10) Consequently the difference is this: although he has a right by birth

in his father's and in his grandfather's property, still, since in regard to

25 the father's property, he is dependent on his father and since the father

has a predominant interest as it was acquired by himself, the son must

give his consent to the father's disposal of his own acquired property.

On the other hand, as regards the grandfather's estate, however, the

1. Of Nārada Ch. XIII. 12. See also Brhaspati XXV. 5.

2. Author unknown. Mr. Colebrooke in a note in his translation remarks that Bālabhatta assigns it to Manu, but it is not found in the Bālabhatti (see Collections, vol. 6, p. 152), nor in Manu.

3. Colebrooke translates it as "though they have arrived at old age," meaning the parents; but the reading of the Mitākṣharā is जराग्रवि सुपत्नितः—"even though he has arrived at old age"—i. e., the son.

4. ["They have not power over it—the paternal estate—i. e., while their parents live" must be referred to the same subject.] Colebrooke Tr.

5. सप्तवर्षावस्य मत्स्रि—when the mother has the periods of menstruation.

(right of) ownership of both is without a distinction, and (consequently) the right of prohibition also exists' (11) By the text:— "If the father recover ancestral property not recovered by his co-heirs, he shall not, unless willing, share it with his sons, for in fact it was acquired by him"—while laying down that if the father recovers property, which had been acquired by an ancestor, and taken by a stranger, but not recovered back by the grandfather, he need not himself share it, against his inclination, with his sons, just as is the case with his self-acquisitions even Manu shows that the father, however reluctant, must divide with his sons, at their pleasure, the effects acquired by the paternal grandfather.

Vīramitrodaya

In regard to the ancestral wealth, on a partition with the father, the determination of the share is not at the pleasure of the father, but for the father a double, and for the sons, there shall be an equal share; so the Author says

Yājñavalkya, Verse 121

"*Bhūh*, 'land', or gold and other kind of property, *śubandho*, 'a corrody,' i. e. something settled on by the King, such as, a cess from a ferryman or the like, this, whatever was earned by the grandfather, *śatra*, 'there', of the father, and of the son, i. e. of both, *ubhayaṃ sadṛśam śatdnyam*, 'the ownership shall be equal', and not that the partition shall be by the father's option alone. This is the meaning.

Indeed: "In property acquired by the grandfather, immovable as well as movable, an equal share has been declared for the father and for the son also", in this text of *Bṛhaspati* (there would) an equal share in contradiction to the text of *Nārada* stated before. But in the text of *Bṛhaspati*, however, the meaning only is that the right to participation for a share is equal, and not the equality of shares also. The word *ca* 'also', follows the word *sadṛśa*, 'equal'. By the use of the word *cha* 'and', the Author adds that in the property acquired by the great-grandfather, the great-grandson has also the right of ownership (121).

1. These passages were referred to in the following cases: *Devi Prasad vs Guntants Koer* 22 Cal 110. *Kalgarda vs Somappa* 33 Bom at p. 681. *Sital vs Madho* 1 All. at p. 397. *Muttayya Chetti vs Sirogiri* 3 Mad. at p. 260.

2. Ub. IX. 209.

3. Ch. XXV. 3.

4. Ch. XIII. 12.

Śūlapāṇi

Yājñavalkya, Verse 121

- 5 *Nibandha*, 'a corrody', such as in the case of a mine &c. granted by the King and the like as a fixed grant of gold, &c. In regard to these, i. e. the land &c. of the father and of the son, the right of ownership is equal, therefore, the partition shall be at the desire of the son, and the distribution also shall be equal. So Brhaspati¹: "In property acquired by the "grandfather, immovable as well as movable, an equal share has been "declared for the father and the son also." (121).

[Colebrooke Sect. VI.]

- 10 [Right of a posthumous son and of one born after partition.]

(1) How shall a share be allotted to a son born subsequently to a partition of the Estate? Anticipating this question the Author replies

Yājñavalkya Verse 122 (1)

- 15 When the sons &c. have been separated, a son who is (afterwards) born of a woman of the same Varṇa (class) shares the distribution.

- Mitākṣharā:—(2) *Vibhakteṣhu*, among the sons² being separated, one born afterwards, *savarṇāyām*, of a wife equal in class, *vibhāgabdhāk*, shall share the distribution. What is distributed, is a distribution. The distribution is of the allotments of the father and mother. He shares that; and so he is a *Vibhāgabdhāk* (one who is entitled to a share in the distribution). In other words, he obtains, after (the demise of) his parents, both their portions. The mother's portion, however, only if there be no daughter, for it is declared³ that "Daughters share the
- 20 "residue of their mother's property, after payment of her debts." (3) Sons by a woman of a different tribe, however, receive merely their own proper share, from the father's estate. And as for the mother's property (they get) the whole of it.

- (4) The same rule is propounded by Manu⁴: "A son, born after
- 30 "a division, shall take the parental wealth only". The term parental, *pitṛyam*, must here be interpreted as "appertaining to both father "and mother", for it is ordained⁵ that: "A son born before (partition), "has no claim on the wealth of his parents; nor one begotten after "it on that of his brother". (5) The meaning (of this text) is this:

1. Ch. XXV. 3 2. See *Dular Koori va Dwarakanath Misser* 32 vol. at p. 241.

3. Yājñavalkya II 118 at p. 1008 ll. 5-6.

4. Ch. IX. 216.

5. By Brhaspati Ch. XXV. 18—Bāṇambhatti p. 154.

one, born previously to the distribution of the estate, has no property in the share allotted to his father and mother who are separated; nor is one, born of parents separated,¹ a proprietor of his brother's allotment. (6) Thus, whatever has been acquired by the father in the period subsequent to partition, belongs entirely to the son born after separation. For it is so ordained²: "All the wealth which is 5
"acquired by the father himself, who has made a partition with his
"sons, goes to the son begotten by him after the partition; those,
"born before it, are declared to have no right." (7) As for those, however, who re-united themselves with the father after partition, the son born after partition should share with these the goods of the 10
father after his death, as directed by Manu³ "Or if there are any who
"are re-united with him, he shall share with these." 122 (1)

*PAGE 83

(8) When the sons have made a partition subsequently to the death of the father, how shall a share be allotted to one born afterwards? Anticipating this question the Author says 15

Yājñavalkya Verse 122 (2)

His allotment must be made only⁴ out of the visible estate corrected for income and expenditure.

Mitākṣharā:—(9) A share allotted for one who is born after a separation of the brethren, which took place subsequently to the death of the father, at a time when the mother's pregnancy was not manifest, is tadviḥbhāgaḥ, his allotment⁵. 20

(It may be asked) but whence shall it be taken? (So) the Author replies: *drīyāt, out of the visible estate*, taken by the brethren. Of what sort? *Aya-vyaya-viśodhitāt, corrected for income and expenditure. Āya,* 25

1. *i. e.*, from their elder children—Dālabhāṭṭi.

2. *By Brhaspati Ch. XXV. 19—Dālabhāṭṭi.*

3. *Kaṇva vs Somappa 33 Bom at 684; Krishna vs Sami 9 Mad. 71.*

4. *Ch. IX 216.*

5. Colebrooke translates 'His allotment must absolutely be made &c.' and in a footnote explains it by a reference to *Subodhini*. *Subodhini*, however, only states that the allotment should be made *only* from the *visible* &c. (दृश्यते नद्विषय इत्यर्थः), premising this by explaining *या* as being used in a restrictive sense (मूलवचनं या शब्देनैवास्ति)—see *Subodhini*, page 53. ll 31-32

6. His allotment—नद्विषयः *i. e.*, the share of such a one born after partition.

income, is that which is produced daily, monthly, or annually. Vyaya expenditure, is the liquidation of debts contracted by the father. Out of the amount of property, which has been corrected for such income and expenditure, a share should be taken and given as "his allotment."

15 (10) The meaning here expressed is this: Including in the several shares the income thence arisen, and subtracting the father's debts, a small portion should be taken from the remainder of each of the shares respectively, and an allotment equal to their own portions, should (thus) be formed for the son born after partition.

10 (11) This must be understood to be likewise applicable to a nephew who is born, after separation, of a brother² who was childless at the time of partition, when the pregnancy of his widow was not manifest. (12) But if the pregnancy be manifest the distribution should be made after awaiting (her) delivery. As says Vasishtha³: "Now
15 (follow the rules regarding) the partition of heritage among brethren.
21 "And (let it be delayed) until those widows who are childless, (but are "pregnant") bear sons." This text should be interpreted thus: "Until
"the delivery of those widows who are pregnant." 122 (2).

1 मन्त्रिद्वयेकं मन्त्रिः i. e., in each distributive share. मन्त्रिद्वय is the unit or basic quantity of a share.

2 Bālabhāṣṭī notices another reading (see p. 1551. 4), viz., "अमजलि" which connects it with the wife of the brother—there would, however, be no difference in meaning.

3 Ch. XVII 40—41.

4 Mr. Colebrooke adds the following note to this passage: "The most natural construction of the original text is 'Partition of heritage is among brothers and women who are childless, until the birth of issue.' The authors of the *Kalpataṛa* & *Chintāmaṇi* follow that interpretation and conclude that "a share should be set apart for the widow who is likely to have issue (being supposed pregnant) and when she is delivered, the share is assigned to her son, if she bear male issue; but if a son be not born, the share goes to the brethren, and the woman shall have a maintenance." The author of the *Smṛti-Chandrikā* acknowledges that to be the natural construction of words, but rejects the consequent interpretation, because it contains a contradiction, and because widows are not entitled to participate as heirs. He expounds the text nearly as it is explained in the *Mitākṣharā* viz., "Among brothers, who have continued to live together until the delivery of the childless but pregnant widow, partition of heritage takes place after the birth of the issue, when its sex is known; and does not take place immediately after the obsequies." *Vīraśaṅka-Bhāṣya* in the *Māṇasa-Sūtrīya* exhibits a similar interpretation: "Partition takes place after awaiting the delivery of widows who are evidently pregnant."

Vīramitrodaya

Now the Author states the share of a son born after partition

Yājñavalkya, Verse 122

Vibhakteshu 'after partition', by the sons, thereafter, *savarnāyām* *patnyām jātān sūto*, 'a son born of a wife of the same *varna*¹; *vibhāga* 5
bhāh, 'shares the distribution'; i.e. from the property distributed in the partition among all the brothers, excluding the partition added by accretion and also what was spent, in the remaining property he becomes entitled to a share as may be properly due (to him).

If, however, the son born after partition be devoid of any qualifica- 10
tion, then *drīyamātrī*, 'only out of the visible estate', such as the cow, the buffalo &c. *āyasya nūdhāt*, 'corrected for income and expendi-
ture', of him i.e. the one born after partition, *vibhāgaḥ syāt*, 'shall the allotment be'.

If it be argued that under the text of Nārada: "when the mother 15
"has ceased to menstruate and the sisters have been married", when
there is a probability for (the appearance of) a brother, a partition having
been prohibited in terms, how can it be possible for a son to be born
after partition? To that the answer is, the desire of the father prepon-
derating, the text of Nārada is set aside, otherwise *there would be the* 20
fault of the text under consideration being with no object (for its appli-
cation). Thus text under consideration is in regard to one who at the
time of the partition was in the womb.

In regard to one *born of the womb which had* conceived after the
partition, Manu² says: "A son, born after a division, shall take the 25
"wealth of the father only; or those who become re-united with him, he
"may have a distribution along with them." The meaning of the word
vā, 'or', is that after the death of the father, he shall take the father's
share from those who had re-united with the father.

Bṛhaspati: "In the case of those of the uterine brothers who have 30
"made a partition with the father, or those who are well provided—such
"of those who are born latest, shall take the father's share." Similarly,—
"Whatever has been acquired by the father after he had separated from
"the sons, all that belongs to the son born after the partition; those born
"before have been declared to be not entitled. As in the case of 35
"(inherited) property, so also as to debts, as also in regard to donations,
"pledges and sales, they are each not entitled, excepting as to the
"equial rites and watery oblations." (122).

Śūlapāṇi

Yājñavalkya, Verse 122

- If the conception in the womb was not known at the time of the partition, but afterwards a child was born of a wife of the same caste, he shall take a share from all those who partook of a share, as says Viṣṇu: "Sons who have separated from their father, should give a share to one (who is) born after the partition "

- As regards the conception after partition, however, Manu² says: " A son, born after a division, shall take the father's wealth only ; or those who had become re-united with him, he should share along with these."

Dṛsyādhetv, ' or from the visible ' &c., i. e. what was not available at the time of the partition, that after being corrected for income and expenditure, whatever is found as the residue from such property, he gets as his own share. (122).

- (13) It has been stated that a son born after partition takes the whole of his father's goods as well as of his mother's. But, here, if the separated father or mother affectionately bestow ornaments or other present on a separated son, then in such a case the gift should not be resisted by the son born after partition, nor, even, if actually given must it be resumed. So the author says

Yājñavalkya, Verse 123 (1).

The wealth which had been given by the parents to one, belongs to him.

- Mitākṣharā:— (14) By the mother and the father, being separated (from their children), to a son separated before, what is given, such as an ornament &c., belongs exclusively to him ; and does not become the property of the son born after partition. (15) By a parity of reasoning, what was given to any one, even before partition, appertains solely to him. (16) So when there is no son born after partition, and the brethren divide the effects of the separated parents after their death, what had been given to each of them, belongs severally to each and is shared by none other. This must be understood.

[Colebrooke Sect. VII.]

[Shares allotted to provide for widows and for the nuptials of unmarried daughters. The initiation of the uninitiated brothers defrayed out of the joint funds]

(1) When a distribution is made during the life of the father, the participation of his wives, equally with his sons, has been directed by the text¹: "If he make the allotments equal, &c." With a view to point out an equal participation of the mother even when the partition² takes place after the death of the father, the Author says

Yājñavalkya, Verse 123 (2).

Of heirs dividing after (the death of) the father, let the mother also take an equal share.

Mitākṣharā:—(2) *Vibhajātām, of heirs dividing, pīturfūrdhwam, after the father, i.e., after the death of the father, mātā apī baret, let the mother also take, anām, a share, samam, equal, to that of her son; provided no stridhana has been given. But if any had been given she is entitled to half a share, as the Author will mention⁴ later on.*

1 See Yājñavalkya II 115 (Sk p 77 ll 9—10, Eug Tr. p 907 ll. 14—15)

2 See *Dular Koori vs Dwarakanath Misser* 32 Cal 241 and *Betti Kumar vs Janaki Kumar* 33 All 118, where at p 121 the Court observes "This (i.e., this passage in the text allowing a share to the mother) in our opinion implies an actual division of the family property, that is, a completed partition under which there is a division of interest as well as separate possession. We do not think that a mere severance of interest where no actual division of the property takes place confers on the mother a right to a share equal to that of her son." See also *Shantappa vs Malappa* 40 Bom L R 1020 at p 1028

And in *Shoo Narain vs Janaki Pershad* 34 All 505, the same court observes at p 509 after referring to this text. "It is thus manifest that Yājñavalkya and the author of the *Mitākṣharā* make a distinction between partition during the life-time of the father and partition after his demise. In the former case a share is allotted to the wife of the father, in the latter, to the mother of the sons effecting a partition." See also *Pratapmal vs Dhanabai* 43 I A 33 *Karj vs Anant* 42 Bom 535

3 For a discussion as to the persons indicated by the word mother, see *Mari vs Channammal* 8 Mad 116 at p 121 &c. *Hussen Sab vs Basappa* 34 Bom. L R. 1325. A step mother, *Har Narain vs Bishambhar Nath* 38 All 82, and even when the father is living *Pratap Singh vs Dalip Singh* 32 All 590 (I. B.), a grand mother, *Kandhan Lal vs Ganes* 47 All 127, but contra, see *Sambhar vs Varad* 51 Bom 417, and in *Hosanna vs Deranna* 48 Bom 468, a step-grand mother, were held to be entitled to a share.

4 Yājñavalkya II. 118.

Viramitrodaya

In the clause as "also what was obtained by learning", with a view to point out the additional property implied in the word *cha*, 'as also', the Author states that one separated cannot obtain property from a brother to whom it has come as an affectionate gift

Yājñavalkya, Verse 123.

Pitr̥bhyām, 'by the parents', this (expression) is indicative of the paternal grandfather also.

At a partition after the death of the father, not only that the brothers are entitled to a share, but their mothers also, and also the step-mothers—the co-wives (of the father), so the Author says, *Pitr̥bhyām*, 'of the father,' *ūrdhvaam*, 'after' i.e. after the death. By the word *api*, 'also', are included the step-mothers (123).

Śūlapāṇi

Yājñavalkya, Verse 123

By the mother and the father whatever has been given to their son, daughter, and the rest, such as an ornament &c. that belongs to him alone even after the death of the father; that should not be distributed.

After the death of the father, when the sons make a partition, the mother also shall take a share equal to that of the son. So following the rule as to a sonless man, says Bṛhaspati: "In his absence, however, the mother gets a share equal to those of the sons". Vyāsa states a special rule: "The sonless wives of the father have been declared to be entitled to an equal share, as also the grandmother; all these have been declared to be equal to the mother." (123).

(3) If any of the brethren be uninitiated² when the father dies, (it may be asked) who is competent to complete³ their initiation? So the author says

Yājñavalkya, Verse 124 (1)

The uninitiated (brothers), however, should be initiated by those brothers who have been initiated before.

Mitākṣharāḥ :—(4) *Bhrātṛbhiḥ*, by the brethren, who make a partition after the death of the father, *asanskṛtāḥ*, the uninitiated, brothers *sanskṛyāḥ*, should be initiated, at the charge of the common estate.

1. Cf. XXV. 64.

2. As to what is the meaning of initiation in the case of males and females see—*Sundarabai vs Shri Narayan* 32 Bom 81, at pages 86, 87—90 referring to and discussing the case in 27 Mad. 200. See *Sudayya vs Ananta Rao* 53 Mad. 84, where expenses for a daughter's marriage were allowed in a suit between a father and sons. But marriage expenses of a male member cannot be allowed. See *Gowd vs Srinivas* 50 Bom. 1, 11, 457.

3. *अथोक्तं केन तद्धितयेते?* Tr. "who has the authority" (to perform the ceremonies of these)

(5) In regard to unmarried sisters, the Author states a special rule

Yājñavalkya Verse 124 (2)

And the sisters also, but by giving them, as an allotment, the fourth part of his own share¹

Mitāksharā —(6) The meaning of the above passage (is this) Bhagunyāscha, and the sisters also, who are not (already) married must be disposed of in marriage by the brethren By doing what? By contributing a fourth² part of their own allotments

* PAGE 84

Thus it appears, that daughters also participate after the death of their father Here in saying "from his own share" the meaning is not that a fourth part shall be deducted out of the portions allotted to each brother and shall be so contributed, but that the daughter of (a wife of) a particular caste shall be allowed to participate for a quarter of such a share as would be assignable to a son of the same caste as herself The sense expressed is this if (e.g.) the maiden be (the daughter of) a *Brāhmanī*, a fourth share becomes hers of so much as is (likely to be) the amount of an allotment for a son by a *Brāhmanī* wife.

(7) Thus, for example, if a certain person had one wife and only a *Brāhmanī*, and one son and one daughter, then in such a case, the whole paternal estate should be divided into two parts and one such part be subdivided into four, and the quarter share being given to the girl, the residue shall be taken by the son. When, however, there are two sons and one daughter, the whole of the paternal estate should be divided

1 (1) Applying this text, among others, the Calcutta High Court held in *Churaman Sahu vs Gopa Sahu* 27 Cal 1 that 'it was competent to a Hindu widow governed by the Mitakshara law to make a valid gift of a reasonable portion of the immovable property of her husband to her daughter on the occasion of the daughter's parana ceremony (at which the marriage of the daughter would be completed and consummated) and that such a gift was binding on the reverend heirs of her husband'

Recently the Bombay High Court held in the Full Bench Case of *Jayasacharya vs Penkuben* 37 Bom 201 at page 203 that this text did not justify the settlement of immovable property by an adopting widow in favour of her daughter attaining majority and ascended to by the natural father of the adopted boy at the time of adoption.

into three parts, and one such part be sub-divided into four, and the quarter having been given to the daughter, the remainder shall be shared by the two sons. If, however, there be one son and two daughters, the father's property should be divided into thirds, and¹ one (of these) shares be severally sub-divided into quarters, and having given two (quarter) shares to the two daughters, the son shall take the entire residue. Thus should be applied the rule in the case of brothers and sisters of a like caste whether of an even or uneven number.

(8) When, however, there is one son of a *Brāhmanī* wife, and one daughter of a *Kṣatriyā* wife, then the paternal estate should be divided into seven parts, and the parts which would be assignable to the son of a *Kṣatriyā* wife should be divided into four parts, and having given such a fourth part to the daughter of a *Kṣatriyā* wife, the residue, the son of the *Brāhmanī* shall take. Or, if there be two sons of a *Brāhmanī* wife, and one daughter by a *Kṣatriyā* wife, the father's estate shall be divided into eleven parts, and from these, the three parts which would be assignable to a son by a *Kṣatriyā* wife should be divided into quarters, and having given such fourth part to the daughter of the *Kṣatriyā* wife, the entire residue, the two sons of the *Brāhmanī* wife shall equally divide and take. Thus the mode of distribution should be inferred in all cases of even or uneven number of brothers and sisters of different castes.

(9) Nor is it right to interpret the text "by giving the fourth part of his own share &c." as signifying giving money, sufficient for her marriage, by considering the word 'fourth' as having no special significance, as this would contradict the text of *Manu*: "To the Maiden sisters, let the brothers give (portions) out of their own allotments respectively, each out of his own share a fourth part; those who refuse to give, shall become degraded." (10) The sense of this passage is as follows: Brothers of the *Brāhmana* and other tribes should give to their sisters of the *Brāhmana* and other tribes respectively portions out of their own allotments as prescribed (for them)

1 Mr Colebrooke has—"and two shares severally sub-divided into quarters." As, however, the quantity of the distributive share allotted comes to be the same as given here, this variation in the reading does not make any difference.

2 अर्थवत्-*artha* is अर्थवत्—meaning, intention, purpose.—It always signifies—a particular purpose. This is explained in Sanskrit by the significant word अर्थ "power or force."

having regard to their tribe—i. e., under the text¹ to be mentioned subsequently viz. "a Brāhmana should take four shares" &c., and should give to each a quarter out of their respective allotments. And it is not meant that a quarter should be given by deducting it from one's own share; but that to each maiden should be given severally 5 the quarter of a share ordained for (a son of) that particular class. The mode of adjusting the division when the castes are dissimilar, as also when the number is uneven, has already been stated. And the allotment of such a share appears to be indispensably requisite, since the refusal of it is pronounced to be a sin in the text²: "Those who 10
"refuse to give shall become degraded."

(11) If it be alleged, that here also, the mention of a quarter has no special significance, and the allotment of property sufficient to defray the expenses of the nuptials is all that is meant to be expressed; the answer is, no; there is no support 15
The answer for the assertion that the allotment of a quarter of a share has no special significance in both³ the Smṛtis; and, moreover, the withholding of it is pronounced to be a sin.

(12) As for what is objected by some, "that a sister who has 20
Another objection answer "many brothers would be greatly enriched if
"(it be understood that) the (text prescribing an)
"allotment of a fourth share were positively meant,
"and that a brother having many sisters would be entirely deprived of
"wealth," such a conclusion already stands obviated by what has been
said before. It is not here directed that a quarter shall be deducted out 25
of the brother's own share and given to his sister, whence any such consequence should arise. (13) Hence, the interpretation of *Medhātithi*, *Asabhāya*⁴ as well as of other writers is square and accurate, and not that of *Bhāruchi*. (14) Therefore, after the death of the father, a maiden is also entitled to a share. But if it be before, she obtains that 30
only, whatever it be, which her father gives, since there is no special precept respecting this case. Thus all is unexceptionable.

1 Yājñavalkya II 125 p 1033 2 Of XI Manu 118 3 i. e. in text of Yājñavalkya & Manu

4 Here there is a mistake in the print at p 84 l 27 for असभाया read असभय
Colebrooke translates असभय as 'who has no compeer' The Commentator of that name, however, is well known

Vîramitrodaya

In regard to a partition after the death of the father, the Author states another special rule

Yājñavalkya, Verse 124

- 5 The brothers for whom the sacraments of initiation, marriage &c have not been performed, should have the sacraments performed by the brothers on whom the rites have been performed.

- 10 *Bhaginyâscha*, 'the sisters also', *nyât*, 'of one's own', *ânâat* 'from the share, of the son in accordance to his share, *datwâ*, 'by giving', 1 share, *samskâryâ*, 'should have the sacrament performed on them.' By the first use of the word *tu*, 'however', is excluded any limitation as to the quantity of wealth for a ceremony, and by its use the second time, (is excluded) its absence.

- 15 If the fourth of a share is not sufficient for the performance of the marriage ceremony of a sister, whatever is necessary for the marriage, so much wealth should be contributed by all in proportion to the property. "Of the unmarried damsels, they should perform the "ceremony (of marriage) according to the wealth," vide this text of *Vishnu*,¹ which has been included by the Author (124)

20 Sûlapâni

Yājñavalkya, Verse 124

- 25 *Pûrvâsamskâryâ* 'By the brothers of whom the sacraments had been performed', *pûrurâdhânam*, 'after the (death of the) father', from the parental wealth also 'the unmarried' *asamskrîta* brothers, should have performed for them the rites such as the *yajñakarma* and the rest

- 30 *Bhaginyopî*, 'The sisters also', by giving a fourth part from one's own (share of the) property, with (the use of) that wealth itself, should have the ceremony of marriage performed for them *Bṛhaspati*¹ (in the text) "Their mothers shall get an equal share, and the daughters, the fourth of "a share", has stated a fourth of a share of the paternal estate, that also has been stated as for the purpose of a ceremony

- 35 When however, a marriage is not possible with a fourth of a share *Devala* says "To the daughters also should be given wealth for their "marriage, of a son less man, however, the daughter born according to "the law of the *Āryas*, shall take the wealth like a son " 'According to one's own wealth', so says *Vishnu*² "Of the unmarried daughters the "ceremony should be performed according to the (magnitude of the) wealth" (124)

[Colebrooke Sect VIII.]

[Shares of sons belonging to different tribes.]

(1) In this manner by the text¹ "If the father make a distribution &c." the mode of adjustment of a distribution among brothers of equal caste, whether made with each other or with their father, has been pronounced. The Author now describes the (mode of) partition among brethren dissimilar in class

Yājñavalkya, Verse 125.

* PAGE 85

The sons of a *Brāhmana* (in the several tribes or *varnas*) have four shares, or three, or two, or one respectively according to the tribe (or *varnas*) ; the children of a *Kṣhatrya*² have three portions, or two, or one, and those of a *Vaiśya*³ take two parts or one.⁴

Mitākṣharā:—(2) Under the text⁴ "Three (wives) respectively according to the tribe of each &c." it has been pointed out that a *Brāhmana* may have four wives, a *Kṣhatrya* three, a *Vaiśya* two, and a *Sūdra* one. In such cases, (the expression) *Brāhmaṇātma-jāh*, the sons of a *Brāhmana*, means the sons begotten by a *Brāhmana*.

(3) *Varṇasāh*, according to the tribes or *varnas* of each. By the word *varna* are indicated women of the different classes such as the *Brāhmana*, and others.

The termination *Sas* (सस्), subjoined to a noun in the singular number and locative⁵ (or other) case bears a distributive sense conformably with the grammatical rule⁶ viz.

"The affix *sas* (सस्) comes optionally after crude forms denoting numbers and words denoting units of a coin in the singular number, when a distributive sense is to be expressed and the word is a *Ācāra*."⁷

1 Of Yājñavalkya II 114 p 994 before 2 &c under similar circumstances

3 This verse is the further development of the law as to intermarriage as laid down in verse 57 of the *Āchārādhyāya*. Mr Mandlik in a note to this passage observes—"Marriages with women of a dissimilar class have been prohibited in this *Āch* age" and refers to Nirṇayamanda III citing a text of *Nārada* "द्विजातमहर्षणु कर्णहर्षणमना" Tr "so also the marriage of a *dātya* with a maiden of a dissimilar class." He observes in conclusion—"the text of Yājñavalkya has therefore no application now"

4 *Āchārādhyāya*, verse 57 p 168 above

5 अविभक्तकर्म—*Kāraka* (कारक) is the relation subsisting between a noun and a verb in a sentence, or between a noun and other words governing it. There are six such *Kārakas* belonging to the first seven cases excepting the genitive, viz, (1) कर्त्तृ (2) कर्मन् (3) काल (4) समान्, (5) जगदान् and (6) अव्ययम् (for the locative)

6 —"सङ्ख्येकचयान् संज्ञासम्"—Pāṇini 6-4-43 सङ्ख्य = words denoting numbers — that by which the sense of unit is expressed

And hence, sons begotten by a *Brâhmana* (on women) in the several tribes, shall respectively have four shares, or three, or two, or one, *chatustridwyekabhâgâh syuh*, i.e. they shall be entitled to such shares

(4) The meaning here expressed is this. The sons begotten by a *Brâhmana* on a *Brâhmanî* take four shares apiece¹, similarly those begotten by him on a *Kshatriyâ* receive three shares each, on a *Vaisya*, two each, and on a *Sûdrâ* one each

(5) *Kshatrajâh*, the children of a *Kshatriya*, i.e. begotten by a *Kshatriya* on women of the several tribes — for that is here understood, — *tridwyekabhâgâh yathâkramam*, have three shares, two, and one respectively, in the order of their tribe i.e. the sons begotten by a *Kshatriya* upon a *Kshatriya* take three shares each, upon a *Vaisya* two each, and upon a *Sûdrâ* one each (6) *Vidjah*, those of a *Vaisya*, i.e. begotten by a *Vaisya* — for here again the expression *Varnasâh* (respectively in the order of their tribes) is understood — have, respectively, two shares or one in the order of their tribes i.e. those begotten by a *Vaisya* upon a *Vaisya*, take two shares apiece, and upon a *Sûdrâ*, one each (7) Since for a *Sûdra* one wife only is allowed² to him, he cannot have sons of a different class from his own, partition among his sons takes place in the same manner as has been mentioned before

(8) Although, the expression “shall have four shares, or three, or two, or one” has been used without any restriction, still, it must be understood to relate to (property) other than land obtained by the acceptance of a gift. For it is declared³ “Land obtained by acceptance of donation, must not be given to the son of a *Kshatriyâ* or other wife of inferior tribe, even though their father give it to them, the son of a *Brâhmana* may resume it when his father is dead”

1 The meaning here expressed may be thus illustrated. Suppose a *Brâhmana* dies leaving behind him four sons born of wives of each class respectively. Then his estate should be divided into 10 shares out of which

4	should be given to the son by the <i>Brâhmanî</i> wife
3	“ “ “ “ <i>Kshatriyâ</i> “
2	“ “ “ “ “ <i>Vaisya</i> “
1	“ “ “ “ “ <i>Sûdra</i> “ and so on

2 Manu III 13. The text is *सुद्रोऽप्यस्यैव* — A *Sûdra* woman only must be the wife of a *Sûdra* man.

3 By *Brâhmapati*, Ch. XXV 30 *Dâkṣamāṇya*.

(9) Since 'acceptance of donation' is here expressly stated, land obtained by purchase or similar means appertains also to the sons born of a *Kṣatriyā* or other inferior women. For the son by a *Sūdrā* woman is specially prohibited¹ (in the text): "The son begotten on a *Sūdrā* woman by any man of a twice-born class, is not entitled to a share of land."² (10) Now, if land acquired by purchase and similar means did not belong to the sons of a *Kṣatriyā* or *Vaiśyā* wife, the special exception of a son by a *Sūdrā* woman would not be pertinent. (11) As for the text³: "The son of a *Brāhmaṇa*, *Kṣatriya*, or *Vaiśya*, by a *Sūdrā* wife is not entitled to a share in the inheritance; whatever his father may give him, let that be his property"—that too relates to the case where something, however inconsiderable, has been given by the father, in his life-time, to his son by a *Sūdrā* woman. When, however, no affectionate gift has been bestowed (on him by his father), he participates for a single share.⁴ Thus there is nothing contradictory.

Vīramitrodaya

Now the Author mentions the shares of the brothers of different classes

Vāṇīnavalkya, Verse 125

Of a *Brāhmaṇa* the four sons born respectively of his four wives viz. a *Brāhmaṇī* and the rest *chaturvidvyeṣabhāgabhāḥ*, 'become entitled to four, three, two and one share (respectively)'. Of a *Kṣatriya* the three sons born of his three wives viz. the *Kṣatriyā* and the rest, respectively are entitled to three, two, and one share. Of a *Vaiśya*, however, the sons born of a *Vaiśyā* and a *Sūdrā* wife are entitled to two and one share respectively; this is the meaning.

This, moreover, is in regard to property other than land received by the acceptance of a donation, vide the text⁵: "Land obtained by acceptance of a gift must never be given to the son of a *Kṣatriyā*, or other (wife); even though their father may have given it to them, the son of a *Brāhmaṇī* may resume it after the death of the father."

1. *प्रतिषेधः*—is a prohibition and not a mere exception by omission
 2. This also is a text of *Bṛhaspati* Ch. XXV. 32—see Bālabhāṭṭī p. 180
 3. Of *Manu* IX. 185.
 4. Colebrooke adds in bracket (of the movables)
 5. Of *Bṛhaspati* XXV. 30

- As to the son of a Śūdrā wife, what has been stated in the rule as to one share for him, that applies in the case where he does not get what was given to him through affection by the father while living. Otherwise however, "The son of a Brāhmana, Kshatriya, or Vaiśya by a Śūdrā
5 "wife is not entitled to a share in the inheritance; whatever his father "may give him, let that be his property." According to this text,¹ it should be understood that he is entitled to a share (125).

Śūlapāṇi

Yājñavalkya, Verse 125

- 10 The sons procreated by a Brāhmana, upon his four wives such as a Brāhmani and the rest, shall take four, three, two and one shares respectively from the property after dividing it into ten parts. Those born to a Kshatriya upon his three wives, such as the *Kshatriya* and the rest, shall take three, two, and one respectively. This has an application
15 in regard to the married wives (125)

[Colebrooke Sect. IX.]

[Distribution of effects discovered after partition.]

- (1) Something is here added respecting the residue after a general distribution of the estate. The Author directs the distribution
20 of property withheld by fraud of brothers &c.

Yājñavalkya, Verse 126.

Effects which have been withheld by one co-heir from another, and which are discovered after the separation, let them again divide in equal shares; this is a settled rule.

- 25 (2) *Mitākṣarā*:—*Effects*, drawyam, i.e. the common property such as had been withheld by co-parceners from each other, and was also not known at the time of the general distribution of the estate, and *vibhakte yaddṛśyate*, such as have been discovered after the partition, of the patrimony, *tatsamāṁ amśāṁ vibhajeran*, let them divide that in equal
30 shares, *iti sthitiḥ*, this thus is the settled rule, i. e. the rule of the law.

(3) Here, by saying 'in equal shares', a partition with deductions has been forbidden. By saying 'let them divide,' it has been pointed out that the property is not to be taken exclusively alone by

the person by whom it was discovered. (4) Thus, since the text is thus significant, it does not imply that no offence is committed by embezzling the common property.

(5) But (it is urged) Manu has indicated an offence only in the eldest, if he appropriate to himself the common property, and not so on the part of the younger brothers? *Vide* the text: "An eldest brother who from avarice shall defraud his younger brothers, shall no longer be honoured as the 'eldest shall be deprived of his additional share, and be punished by the kings."

(6) (To this) The answer is, it is not so. For by pronouncing such conduct criminal in the case (even) of an elder brother, who is admittedly independent and is in a quasi-parental position, it is more assuredly shown—under the rule in the maxim² of 'the loaf and the staff'—to be (much more) criminal in the younger brothers, who are subject to the control of the eldest, and are held in tutelage as sons. And moreover, such conduct has been declared to be an offence without exception in the *Śruti*³: "Him, indeed, who deprives an heir of his right share, he does certainly destroy; or, if he destroy not him, he destroys his son, or else his grandson." (7) He who deprives an heir *i. e.* a person entitled to a share *i. e.* debars or excludes him from a share *i. e.* does not yield to him his proper

1 Chapter IX 213, read in the text "गोप्येति"

2 *अव्ययव्ययम्*,—is the maxim of 'the loaf and the staff' or 'the stick and the cakes'. See note, on page 86 orig. Sanskrit—If a number of cakes are attached to a staff or stick and the stick is carried off, or eaten by mice, it need not be expressly stated that the cakes have had the same fate—it is an inference which necessarily follows. This rule is the same as the *an inference, reasoning of the West*.

3 This is the quotation from the *Atarva Brāhmaṇa* II (VI-7) in connection with that portion of the Soma sacrifice which deals with the animal sacrifice. The passage occurs in a discussion whether the Rākṣasas should have a portion of the sacrifice, one side suggesting that they should not be mentioned and must not have a share, and the other side asserting that they *should* be mentioned, and as a reason in support of it is the text in the passage which in substance means that an unjustifiable deprivation of another's dues operates by reaction in his own life time or in the generations following (See *Ānandāśrama Series* No 32 Part I page 172. The discussion begins at p 170, see also *Sūrya's Commentary*)

allotment, such a one who is thus debarred of his share, destroys or annihilates i. e. renders a criminal that person who so debars him of his right; or, if he do not immediately destroy him, he destroys his son or his grandson. (8) It is (thus) pronounced to be criminal in any person without any distinction as to the eldest (or youngest &c.) to withhold common property.

(9) If it is argued that blame is not incurred by one who takes the goods, thinking them (to be) his own, under the notion that the common property also becomes his property and appertains also to him (individually). (10) The answer is, that is wrong. For, though he took it thinking it (to be) his own, still

he has taken the property of another person, contrary to the injunction which forbids his so doing, and thus he certainly does incur blame. (11) As, in answer to a proposed solution of a difficulty, "If an oblation of green kidney beans be not procurable," and black kidney beans be used in their stead by reason of the resemblance, the prohibition contained in the rule viz. "black kidney beans are not fit to be used in sacrifices" does not apply, since they were used by mistake for ground particles of green kidney beans, it is on the contrary maintained, as the right opinion, that, "while the ground particles of green kidney beans be taken, the ground particles of black kidney beans are also actually employed as being unforbidden and the prohibitory command is consequently applicable in this case (by inference)." (12) Therefore it is established, both from the letter of the law and from reasoning, that an offence is committed by taking common property.

1 The argument of the objector and the reply to it is sufficiently apparent from the text itself. According to the fixed rules of interpretation *saṃyog-vyavahāra* is also a part of the thing itself. And the meaning here is that *saṃyog* (the black kidney beans) having been prohibited generally, the prohibition extends to their *saṃyog* also—which is a part of the *Māṇḍika* itself and therefore, although mixed with other sorts, have to be avoided, and for this reason they must not be used as a substitute for the green ones. (See also Bāṇabhaṭṭi p. 162 & Subodhini p. 56).

Vīramitrodaya

Thus even when a partition has taken place of the common stock¹ everywhere, if any property has been taken away by any one, in regard to that property no special right accrues to him individually, as a distribution of that portion has not taken place; and so a fresh partition must be made of that property, so the Author says

Yājñavalkya, Verse 126

Samak, 'in equal', i. e., equal to the share in the partition which had taken place before. The rest is clear. (126)

Śūlapāni

10

The Author mentions about a lapsed share

Yājñavalkya, Verse 126

What was kept concealed at the time of the partition, but was discovered afterwards, that should be made (into) equal (parts) and distributed. The meaning is that an additional share &c should not be given to the eldest. This also holds in the case of a debt, so says *Manu* "If after all the debts and assets have been duly distributed according to the rule, any property be discovered afterwards, one must divide all that equally" (126)

[Colebrooke Sect X]

20

[Rights of the Dwyāmūṣhyāyana² or son of two fathers]

(1) Intending to propound a special allotment for the *Dwyāmūṣhyāyana* (or son of two fathers), the Author describes the nature of that relation:—

Yājñavalkya, Verse 127.

25

By one who has no male issue, a son begotten on the soil of another man, under a legal appointment to both also, is such a one lawfully heir, and giver of funeral oblations.

1 Ob ix 213

2 "As here described, the *Dwyāmūṣhyāyana* is restricted to one description of son viz the *Kṛtetraya* or "son begotten on the wife", but the term is applicable to any adopted son retaining his filial relation to his natural father along with his acquired relation to his adoptive father" Colebrooke See also *Basson* ex. *Lingayyada* 19 Rom 428 at pp 464 and 472 (a case of *Lingayats*—based on custom), & *Mayne's Hindu Law* p 173

Mitaksharâ —(2) Under the rule of the law contained in the text¹,

- * To a sonless widow, one commanded by the *Guru* &c., aputrena by
one who has no male issue &c. by the husband's brother or the like
parakshetre on the soil of another &c. on the wife of another nyugotp
aditah son begotten under a legal appointment from venerable persons
abbayah to both &c. the owner of the seed as well as that of the soil
he is rikthi near &c. successor to their estates and pindadatâ, giver of
funeral oblations, dharmatah according to law

- (3) The meaning of this is as follows. When the person who is
10 duly appointed such as the husband's brother, or other person and
being even himself destitute of a male issue, proceeds to an intercourse
with the wife of a childless man, for the sake of raising issue both to
himself and for the other the son whom he so begets is the child of
two fathers and denominated *Dyāmushyāyana*. He is heir to both
15 and offers funeral oblations to both (after their death). (4) When
however the person appointed, has male issue and has intercourse
with the wife for the sake of raising up issue to her husband only, the
child so begotten by him is the son of the owner² of the wife, and
not of the³ owner of the seed. And such a one by this restriction
20 is not heir of the owner of the seed, nor is he qualified to present
funeral oblations to him as has been so declared by Manu⁴, 'Where by
a special compact a field is made over (to another) for (the sowing of)
' the seed then the owner of the seed as well as of the field are both
' considered in this world as joint sharers of it (&c. of the crop) '

- 25 (5) By special compact &c. when the field is delivered by the owner
of the soil to the owner of the seed on an agreement in this form.

Let the child which will be here produced belong to us both' then
of the child begotten in that soil the owners of both the seed and the
soil are considered by the mighty sages as joint sharers. (6) So⁵

- 30 If there be no special agreement with respect to the crop between
' the owner of the field and the owner of the seed the benefit clearly

1 &c. I say orally in Acharasāhyaya 68.70 p. 18 above in which the
husband's brother a sapta or a sagotra have been allowed to raise issue on the
womb & widow of the childless &c. relative and such a son is called the *Akhetra* son

&c. of the wife's husband by marriage *Akhetra* (land) here means wife

2 &c. joint owner

3 Cl. 12-60

4 Manu Ch. IX-52

]

belongs to the owner of the field; for "the receptacle is more important than the seed." (7) "If there be no special agreement with respect to the crop"; i. e. with a special agreement viz. "Let the child begotten here belong to us both", whichever child is begotten on another's ground, that child verily is of the owner of the soil; 5
 for the receptacle is more important than the seed; as is observed in the case of cows, mares, and the rest.

* PAGE 87.

(8) Even here, however, the appointment¹ for raising up issue is only in relation to a woman who had been betrothed, since any other such appointment is forbidden 10
 by Manu.² For, after premising an appointment thus: "From a brother-in-law or from a *Sapinda* (by means of cohabitation with him) by a woman who has been duly authorised, the desired offspring may be secured, on failure of issue. The person, however, so appointed to raise issue on the widow, shall at night, annointed with 15
 "clarified butter, and silent, beget one son (only), but never a second in any case." Manu³ has himself prohibited this practice: "By regenerate men, a widow must not be authorized to conceive by any other; for any, who authorize her to conceive by another, violate the primeval law. The raising of an issue by appointment 20
 "is nowhere mentioned in the *mantras*⁴ regarding marriage, nor is the re-marriage of widows mentioned in the rules concerning marriage. This practice which is reprehended by the learned *Dicijas* as fit only for beasts, is referred to even in connection with men, while King Vena held sovereign sway. He possessing the whole 25
 "earth, and therefore eminent among⁵ saintly Kings, formerly brought about a confusion of tribes when his intellect was infatuated

1. For Colebrooke translates 'Commission'.—See Bhamhatali p. p. 166-167, where a dissent from this doctrine is noted and passages are cited showing that a father is free to dispose of his girl, if after troth verbally plighted, the husband die before the actual celebration of the marriage. In such a case she remains a damsel (*Kanyā*) and may be disposed of by her father.

2. Ch. IX-39-40

3. Ch. IX-61-68.

4. i. e. hymns from the *Vedas* bearing on, or chanted at, nuptial rites.

5. A *Rājjarshi* is a king who has all the characteristics of a saint. The compound is solved in Sanskrit to indicate "that he is a king as well as a saint."

"by lust Since that time, whoever, through folly, appoints a woman
"whose husband is dead, to have intercourse for the sake of progeny,
"sages censure such a one"

- (9) Nor is an option¹ to be inferred from the contrast of precept
and prohibition, since they, who authorize the
practice of appointment, are expressly censured
and disloyalty is strongly reprobated in speaking
of the duties of women while continence is much praised As says
Manu² 'Better that she (the faithful wife) emaciate her body by
"living voluntarily on pure flowers roots, and fruit, but let her not
'when her lord is deceased, even pronounce the name of another
'man"—By this text having prohibited recourse to another man for
the sake of maintenance Manu³ interdicts the recourse to another
man even for the sake of progeny thus "Let her, until death con-
"true patient (of all injuries) self controlled and continent, and
"maintain before her vision that most incomparable rule of virtue,
"followed by women⁴ devoted to one husband only Many thousands
"of Brāhmanas having avoided sensuality from their early youth,
'have gone to heaven (even) without continuing their rice And
'like those Brāhmachāris⁵ a virtuous wife who, after the death of her
'husband settles herself in a uniform continent life ascends to
'heaven, even though she has no son But a woman who from a
'desire to have offspring violates her duty towards her (deceased)
'husband brings on herself disgrace in this world and loses her
"place (with her husband) in the next world" Therefore it is not

1 Mark the gloss of *Uddhātaka* on this verse He says that union with another man bad but emaciating the body is also bad The text of Manu 'Better that she emaciate the body &c has an implied censure also for the emaciation of the body It only means that between the two evils the evil of emaciating the body may be preferred ' वायस्यनृपकायोऽपि स्यूतनाम् । देहशय्याभ्यामप्यम् । इदं त्वं वदकावतः पदेष्वेव दुरधेयं मममेव ।

² Ch V 157

³ Ch V 128 161

⁴ एष पतिवत्या मा एकपती—vide the rule of Gr 'निश्च सत्यवद्वि' (4 1-35) 'In forming the feminine with the aff x इत् (इ) the word पति always takes the substitute नृ in the words like 'सपती and the rest"

⁵ i e persons taking a lifelong vow of celibacy and living accordingly

right to deduce an option¹ from the injunctions of affirmation and prohibition

(10) Thus *Nyaya*² having been prohibited in the case of a wife sanctified by marriage, what then is a *Nyaya* sanctioned by law? so the (same³) author says "The damsel, whose husband shall die 5
"after troth verbally plighted, the brother of the husband may take⁴
"her according to the following rule having espoused her in due
"form she being clad in white garments, and pure in her conduct,
"let him privately approach her once in each proper season⁵, until
"issue be had"

10

(11) It appears from this very passage, that he, to whom a damsel was verbally given, is her husband even without a formal acceptance on his part. If he die, his own uterine brother, whether elder or younger, shall take her : *e.* marry her "In due form" : *e.* as directed by the *Sâstras*, "having espoused her" : *e.* wedded 15
her, and according to the following rule, namely the rule directing the besmearing of the body with clarified butter, and the restraint in speech &c.—let him "privately" : *e.* in secret, approach her, clad in a white robe, "and pure in her conduct" : *e.* having a restraint on her mind, speech and gesture, once at each menstruation, until 20
conception (12) Such a marriage is nominal⁶, and a mere part of the

1 According to the rule of interpretation विद्वेदुः शिरः 'when there are two contradictory texts, an option is inferred' So the Author says that no case for inferring an option arises on the ground that there are two injunctions of a contradictory character *et.* one of affirmation and another of negation. An option (विकल्प) would arise if the two injunctions were of an equal character (तुल्यवस्तु विरोधेन). But here while a censure is passed upon those who authorize such a practice, none such is to be found in reference to those who forbid it. The *śūdrâ* (: *e.* the affirmative injunction) and the *Nishidhâ* (: *e.* the injunction of a negative character) are therefore not equal, and therefore an option cannot be inferred (See *Bâhyan bhâṣya* p. 165, ll 6-10 *Subodhani Tr* p. 57, ll 15-20)

2 *Nyaya*—is raising issue on the wife of a deceased person. See *Yaju.* I 68-69 p. 187 Note 1 on page 1010

3 : *e.* Maan Ch IX. 60-70

4 विद्वेदुः—'know her'

5 : *e.* at each menstruation period

6 The meaning is—that as the injunctions as to clarified butter and other observances are prescribed as mere forms in approaching an authorized widow so these espousals are a mere part of that intercourse, and not a principal and salutatory part, whence a regular marriage between the parties might be inferred. See Colebrooke citing *Rajamhâṣya* p. 167 & *Subodhani* p. 57, ll 23-25

form in which an authorized widow shall be approached, like the injunction of clarified butter &c. It does not make her the wedded wife of her brother-in-law. (13) Therefore, the issue thus begotten belongs to the husband of the wife¹ and not to the brother-in-law. By special agreement, however, the issue may belong even to both.

Vîramitrodaya

Among the sons of the same *varna* or of different *varnas*, of twelve sorts such as the *Aurasa* and other sons, the Author mentions a partition among themselves, and in some cases a non-division, but coupled with (a right to) maintenance

Yājñavalkya, Verse 127

Parakshetre, 'on the soil of another', *aputrena*, 'by one who has no male issue', by the husband's brother, or by one of a different *gotra*, *nyogena*, 'under an appointment', by the elders, a son *utpāditaḥ*, 'begotten', *ubhayaorapi*, 'of both even', i. e. of the owner of the seed and of the land also, becomes the heir entitled to take the entire heritage, and *pindaḍātā*, 'the giver of funeral oblations' also; *dharmataḥ*, 'under the law', i. e. in accordance with the provisions of law.

If to the owner of the seed, or to the owner of the soil, afterwards an *aurasa* son be born of another wife, (then) according to the *Brahmapurāṇa* : " *The Kṣhetraja* son takes three parts, and *Putrikāsula* "the fourth part." This is the meaning of the word *chā*, 'also'. By the word *api*, 'also', is included the father by the seed, and of the soil. (127).

Śûlapāṇi

Yājñavalkya, Verse 127

Niyoga 'appointment such as 'annointed' with clarified butter &c.,' *Aputrena* 'by one who has no male issue'; upon the wife of another, *nyogopāditaḥ* 'begotten under a legal appointment', *ubhayaḥ*, 'of both,' he is entitled to perform the funeral ceremony, as well as to take the estate. This is to be with the consent of both, so says Nārada²: "With the consent of the owner of the land he whose seed is sown in the land; the issue of that is considered to be of both, of the owner of the seed and of the soil " (127).

1. Lit. Tr. "owner of the soil" *हवामन्नि* i. e. to the man who was her husband by marriage.

2. Ch. XII. 68

[Colebrooke Sect. XI.]

[Sons by birth and adoption.]

(1) A distribution of shares among sons, equal or unequal in class, has been explained. Next, intending to show the rule of succession among sons principal and secondary, the Author first describes their characteristics—

Yājñavalkya, Verses 128-132, 133 (1)

The *Aurasa*, i. e. 'legitimate son' is he who is procreated on a lawfully wedded wife; equal to him is 'the son of an appointed daughter', *Putrikā-sutah*, *Khetraya* is 'one begotten on a wife' by a *saputra* relation of her husband or by another (128)

One secretly produced in the house is known as *Ghṛhaya*, 'a secretly born son'. A 'damsel's child', *Kṛnina*, is one born of an unmarried daughter and is considered as the son of the maternal grandfather (129).

A child born of a woman whose marriage had or had not been consummated, is called 'the son of a re-married woman', *Pāunarbhavaḥ*. He, whom his mother or father may give (in adoption) shall be considered as 'the adopted son', *Dattaka*.

(130) 'A son bought', *Kṛta* is one sold by them. 'A son made by himself', *Kṛtrima* is one adopted by the man himself. One who gives himself is 'a son self given' *Swayamdatta*. One who was (along with his mother) accepted in marriage while he was in the womb is called 'a son received with the bride' *Sahodhaya*.

(131) He, who, having been deserted (by his parents) is taken (for adoption) is 'a deserted son' *Apariddha*, [131 (1)].

Mitākṣharā —(2) The issue of the breast (*uras*) is an *Aurasa* i. e. the legitimate son. Such a one, moreover, *dharmapatniyah* is one, *born of a lawfully wedded wife*. A woman of equal tribe, espoused in lawful wedlock, is 'a legally wedded wife,'—and a son begotten on her is a true and legitimate son, and is chief in rank. (3) *Tatsamah putrikā-*

1 i. e. a daughter appointed to raise issue under the contract mentioned by *Yājñaka* (XVII 17)—see further on p. 1016 II 1-3

2 Wife i. e. of the person with whom she was lawfully wedded

3 This passage means that such a son would have preference when there is a competition between him and other kinds of sons and not that other kinds of sons are not heirs at all. See *Pāṇini* *Pratya* Ch II Part II 2

And according to *Madana Pūrvya* the sons born of lawfully wedded wives although of different tribes are all legitimate. See also *Bāṇabhaṭṭa* p. 169

These passages were referred to in *Manu* *re Pūrvya* *ślo* II Man. 49 at p. 52 and *Tulsi Rara* *re Bahara* *Lat* 12 All at p. 250

- sutah, equal to him is the son of an appointed daughter. 'Equal to him is equal to the legitimate son' The son (born) of a daughter (appointed) is a *Putrika suta*. And accordingly he is equal to a legitimate son. As has been said by Vasishtha¹ "This damsel who
 5 "has no brother, I will give unto thee, decked with ornaments; (so "that) the son who may be born of her shall be my son" Or that term may mean a daughter regarded as a son by reason of the fact that the daughter herself is to be regarded as a son. All the same such a one is also similar to a legitimate son, as she has more of the parts
 10 of the mother's body and less of the father's. As says Vasishtha² "The second is an appointed daughter herself" The meaning is that the second (kind of) son is the appointed daughter³ herself. (4) The son of two fathers (*Dvyaśmushydyana*) is inferior to the natural father's legitimate son, because he is produced in another's soil,
 15 (5) *Kshetrajah kshetrajāstasū sagotrena wā*, the *Kshetrajah* is one begotten on a

1 Ob XVII 17

2 Ob XVII 15—The reading in the *Vaughāṇa Sūtra* is (third) तृतीय and not (second) द्वितीय

3 The *putrī/āputra* is of four descriptions. (1) The first is the daughter appointed to be a son (see *Vaughāṇa* XVII 16 वृत्तिवत्तेन). (2) The next is her son. He is called 'the son of an appointed daughter', without any special contract. He is however to be distinguished from the next: & the third class. He is not in the place of a son but in the place of a son's son and is a *daughter's son*. Accordingly he is described as a *daughter's son* in the text of *Saṅkha* and *Zākhā*. "An appointed daughter is like unto a son, as *Prachetasa* has declared her offspring is termed a son of an appointed daughter: he offers funeral oblations to the maternal grandfathers and to the paternal grandfathers. There is no difference between a son's son and a daughter's son in respect of benefits conferred." (3) The description of a son of an appointed daughter is the child born of a daughter who was given in marriage with an express stipulation as stated by *Vaughāṇa* XVII 17. He appertains to his maternal grandfather as an adopted son. (4) The fourth is a child born of a daughter who was given in marriage with a stipulation in this form: 'The child who shall be born of her shall perform the obsequies of both.' He belongs as a son to both grandfathers. But in the case where she was in thought selected for an appointed daughter she is so without a compact, and merely by an act of the mind (*Manu* Ch IX 127 and 136). *Hemādri* quoted in *Colebrooke*. See also *Thakur Jeelnath Singh vs Court of wards* L R 21 A 103 106 *Pals vs Gerenda* 1 Bom 107 and in particular *Karuppa Vachiar vs Sanlara Narayana Chetti* 7 Mad 309 at p 312 sqq, and *Jamiatram vs Bai James* 2 Bom. H O Rep 11 at p 17.

wife by a sagotra relation of her husband or by another. By another, *starena*, i.e. by one who is not a *supinda* or by a brother of the husband is a *Kṣhetraja* son (128)

(6) *Gūḍhaja*, the secretly born son is one *prachchhanna utpannah*, secretly produced, in the husband's house. By excluding¹ the case of a child begotten by a man of inferior or superior tribe this must be understood to be restricted to an instance where it is not ascertained who the father is, but it is certain that he must belong to the same tribe 5

(7) *Kannah* a damsel's child, however, is a son begotten on a damsel by a man of equal class, (under the same limitations) as mentioned before, and he is the son of his maternal grandfather provided she be unmarried and abide in her father's house. But if she be married, the child becomes the son of the husband alone. As says Manu² "A son whom a damsel secretly bears in the house of her father is considered as the son of the husband and denominated "damsel's son, as being born of an unmarried woman (129). 10

(8) *Pannarbhavah*, the son of a remarried woman, is the son begotten by a man of equal class on a twice married woman *akṣatāyam wa kṣatāyām wā* whose marriage had or had not been consummated 20

1 : : This clause starts with the assumption that the begetter though unknown is not of a dissimilar class. The only thing unknown is the particular identity of the man. For the ignorance as to the particular person must be the husband's not of the wife and the knowledge of his equality in tribe may be obtained through her for surely she must know who he is. But if she really do not know his tribe having been secretly violated by a stranger in a dark night then the child may bear the name of *Gūḍhaja* but not a *Gūḍhaja* son properly so called as described before [see *Balamāhātī* p. 170 ll 15 18 citing *Mādenaparijata*]. *Balamāhātī* also refers to the opinion of some according to which the child must be abandoned.

As to the status of such a son whose father is unknown he will have the same status and domicile as that of his mother and the same opinion is quoted by Colebrooke as being that of *Yachaspati Misra* in the *Siddha-Chinmasa*.

2 See *Balamāhātī* p. 170 ll 20 24. Damsel does not here signify unmarried only for even with that import the term is frequently used in the sense of one who has had no connexion with a man. It signifies a woman with whom a regular marriage has not been consummated.

See also *Sūtradhā* p. 58 ll 7 10 Tr. p. 146 ll 12 15

3 Ob IX 172

(9) He, who¹ is given by his mother under her husband's direct-

The adopted son

ion, while the husband is absent on a journey or is dead, or who is given by the father, or by both

(parents) to a person of the same class, becomes *dattakah*, the adopted son, of him to whom he is given. As says Manu² "He, whom his mother or his father, in a time of distress affectionately give with (a libation of) water and who is of the same class, is called a son given."

(10) By specifying distress (it is intimated that) the son should not be given unless there be distress. This prohibition regards the giver³. (11) So an only son must not be given. *Vide* the text of *Vasistha*⁴ "But let him not give or receive an only son." (12) Nor, though a numerous progeny exist, should an eldest son be given, since he alone is the principal among those who fulfil the office of a son as is shown by the following text⁵. By the eldest son as soon as

(13) The mode of accepting a son for adoption is propounded by *Vasistha*⁶ "One who desires to adopt a son shall assemble his kinsmen, announce his intention to the king, make burnt offerings in the middle of the house, reciting the *Vy'rhitis* and take (as a son) an unremote kinsman, just the nearest among his relatives⁷."

*PAUX 80

1 These passages have been referred to in a number of cases of which the following may be noted—*Pangubâ vs Bhagurthibai* 2 Bom 380 *Sârâ Jalusa Gurusu vs Srima vs Shri Balasa I amalakhamma* 26 I A 113 2 Ch IX 168

3 And not the taker. See *Bâlamôhâya & Subodhina* p 68 l 11 Tr 146 l 20

4 Ch XV 3 5 Of Manu Ch IX 108

6 Ch XV 6 See *Jaya Makul Deb vs Sri Jaya math Jansmons* 2 Pat 469 at p 48, for essentials of adoption. It is only one who is devoid of issue who can adopt. Thus the existence of a disinherited son is a bar to an adoption. *Bharmajya vs Ujjayyada* 46 Bom 45. A contrary view has been taken in *Malins* see *Nagammal vs Sankarappa* No 1654 Mad. 576 see also *Jadhya vs Dhanrao* 39 Bom L R 147 at pp 150-151

7 Note the following very important remarks of West and Bühler in connection with this (3rd edit on pp 881-888). Say the learned authors

"The gradual abolition of grosser means of supplementing a family in favour of the system of adoption is itself a striking evidence of progress in civilization. The appointment of a daughter is a more intimate place between this and the coarse materialism of the earliest modes of substitution. It is no longer recognized, in traces of the institution still remain in the existing law. From it on the one hand has been derived the right of succession of the daughter and the daughter's son for adoption. As an limitation of a male son the adopted son ought to be born of some woman, whom the adoptive father could have

(Contd on next page)

(14) By the expression—"an unremote kinsman"—the adoption of one very distant by country and language is forbidden

(*Could from last page*)

married This excludes the son of a daughter, and such is the law, generally received amongst the higher castes and sub-divisions of the grant Śūdra class almost everywhere, and amongst some of the higher castes by their customary law, the daughter's son is deemed fit for adoption, and even the most fit on account of the place he might formerly have taken as a son by appointment, as well as of the blood connection on which the system of appointment itself was founded "

"The passage of Vasishtha which directs that a man desiring to adopt shall make his selection from amongst near relatives, and for choice take the nearest, is so obscurely expressed as to admit of various interpretations How the ingenuity of commentators has been exercised upon it may be seen in Colebrooke's note to the Mit Āchp I Sect 11 Para 13 The Samskāra-Kausthubha and the Nirṇaya-Sindhu, construing the direction most liberally, approve the adoption, falling a Sogotra Śapinda of a daughter's or a sister's son The brahmins, following the Vyavahara-Mayukha, are almost uniformly opposed to this except in the case of Śūdras They rely on the impossibility of a real paternal and filial relation between the fictitious father and a son so born, and the decisions in Bombay must be considered perhaps to have confirmed the Śastras' view, but customary law seems in a measure at least to have been represented by the doctrine of the two works referred to These were no doubt written under the influence of ideas which shaped the customary law, and they afford an example in their divergence from the more generally received authorities of parallel growths of doctrine springing from the same original source, yet taking quite different lines of development according to the medium in which they were placed The real nearness of daughter's son once procured real accept-ance for the doctrine of appointment, and this in its turn has facilitated the admission of the daughter's son as fit for adoption The Śastra had however to be interpreted accordingly, and this interpretation setting aside the ordinary doctrine of a necessary difference in the families of both of the real mother and the adoptive father paved the way for the admission of the sister's son In the South of India the Brahminical law was for the most part apparently accepted only with this qualification, adapting it to previously existing customs as in the case of marriage between the children of a brother and a sister repeated by the stricter law of the North, but allowed in the South, because it could not be prevented "

On this passage observe the learned judges of the Madras High Court "The divergence between the generally accepted authorities and actually existing customs and the survival of the customs sanctioned by the earlier law appear to be accounted for in the above passage on sound historical principles, and the conclusions therein arrived at to receive confirmation from what we find to be established by evidence in the case before us." *Vayadinda vs Appa* 2 Mad. at p. 54

(15) The same (ceremonial) should be extended to the case of sons bought, self given, and made. for paucity of reasoning requires it (131).

(Contd from last page)

*The following is the note of Mr. Colebrooke referred to in the above message —

"*Raghuna dana*, in the *Udiâhatatwa*, has quoted a passage from the *Kêlîâ Purâna*, which, with the text of *Vasishtha*, constitutes the ground work of the law of adoption as received by his followers. They construe the passage as an unqualified prohibition of the adoption of a youth or child whose age exceeds five years and especially one whose initiation is advanced beyond the ceremony of tonsure. This is not admitted as a rigid maxim by writers in other schools of law, and the authenticity of the passage itself is contested by some, and particularly by the author of *Vyasanâra Vayakha*, who observes truly that it is wanting in many copies of the *Kêlîâ Purâna*. Others following the text to be genuine, explain it in a sense more consonant to the general practice, which permits the adoption of a relation if not a stranger, more advanced both in age and progress of initiation. The following version of the passage conforms with the interpretation of it given by *Nanda Pandita* in the *Dattaka Mimânsâ* 'Sons given and the rest though sprung from the seed of another yet being only initiated (by the adopter) under his own family name, become sons (of the adoptive parent). A son having been regularly initiated under the family name of his (natural) father, unto the ceremony of tonsure does not become the son of another man. When indeed the ceremony of tonsure and other rites of initiation are performed (by the adopter) under his own family name, then only can sons given and the rest be considered as sons also they are termed slaves. After their fifth year, O King sons are not to be adopted. (But) having taken a boy five years old, the adopter should first perform the 'sacrifice for male issue'."

'The *Putrâksha* or 'sacrifice for male issue,' mentioned at the close of this passage is a ceremony performed according to the instructions contained in the following text of *Veda* "He who is desirous of issue should offer to fire, parent of male offspring an oblation of kneaded rice roasted upon eight pots-herds, and to *Indra* father of male offspring a similar oblation of rice roasted on eleven pots-herds. fire grants him progeny, *Indra* renders it old."

(Colebrooke)

'Nearest among his relation' — *Banthis-Sannikṣtam* is the expression in the text. There are also other readings variously noted regarding this passage viz. by *Nanda Pandita* in his commentary on *Vishnu* "*Adurabandhavam sannikṣtam* eva — which gives an entirely different rule viz. "one who is kindred dwell in a country not far off and one not connected by affinity." *Vyâkṣhepa* himself explains the term *Adurabandhavam* in the next line by the remark that by this expression the adoption of one very distant by country and language, is forbidden. And *Bhâskara* (page 172) after referring to the text of

- (16) *Kṛitah, the son bought*, moreover, is one who tābhyām, by them, i.e. by both mother and father, or by either the mother or the father, vikṛitah, was sold, and as before, excepting, an only son, or an eldest son, in a time of distress and belonging to the same class. As for the text of Manu: viz—"He is called a son bought, whom a man, "for the sake of having issue, purchases from his father and mother: "whether the child be equal or unequal to him"—it must be interpreted, as whether like or unlike in qualities, not in class; since the Author concludes by saying "This law is propounded by me, in regard to sons "equal by class". (17) *Kṛitmah syāt swayamkṛitah, the son made is one adopted by the man himself*—The son made however, is the son adopted as a son himself by the man, who is desirous of male issue, and enticed by the show of money and land, and being an orphan without father and mother: for, if they be living he is subject to their control.³ (18) *Dattātmā, the son self-given*, is one who, being bereft of father and mother, or abandoned by them, presents himself, saying "Let me become thy son." (19) *Śabodhajah, the son received with the bride*, is one who being in the womb, is accepted (in the course of the marriage) when a pregnant bride is accepted. He becomes the son of the husband (131)
- (20) *Apaviddhaḥ a son deserted*, is one who having been deserted, pṛṣṭhah by his father and mother, is taken (for adoption) grhyate. He is the son of the taker.

In all cases he must be of the same class (as with the adoptive father)

(Contd from last page)

Varaṇṣī (XV 7-8) remarks "If possible—he should take a bandhusam-krṣṭam: e.g. a brother's son or the like, on failure of such a one he should take sūrasābandhavam, one whose kinship is not remote, i.e. whose means of livelihood is in a near place, whose father and other relations are near, and whose family and character are consequently known" Mr Colebrooke also notices the other readings viz those given in Kulpatara and Rāmāhara viz "Adāre bāndhavam asamkrṣṭameva"

1. Ch IX 174

2. See further on II 193 (1) p 1057 37.

3. The consent of both is the only requisite. No ceremonies, nor a document is necessary. Kamla Prasad vs Murti, 15 Pat 550.

4. If a woman be married while pregnant, the child born of that pregnancy is a Śabodha son, such a one is to be distinguished from a Kṛṣṇa (son of an unmarried damsel) because he is not born of a damsel. It is not clear how he can be distinguished from a Gṛdhraja, unless a too technical construction is placed on the suffix ja 'born', since after the marriage he is no longer one "secretly born". Whereas the chief element of a Gṛdhraja is the concealment of the individual of the progenitor from whom the woman has conceived still remains there.

Śūlapāṇi

Yājñavalkya, Verse 128

- "A son begotten by oneself upon a wife married according to "sacrament, one should know him to be the *Aurasa*," under this text of
- 5 *Baudhāyana*,¹ one begotten by oneself upon a married wife of one's own caste is the *Aurasa* son. Equally entitled for a share like the *Aurasa*, is the *Putrikāputra*. *Manu*² describes a *putilā* thus: "One having no issue, may make his daughter in this manner an appointed daughter viz. "The child which may be born of her, shall be one entitled to offer
- 10 "funeral rites to me."

- On the wife of another who is without an issue, and who was appointed by the elders, and under the ceremony of *Niyoga* such as the anointment with clarified butter &c, a son begotten by a *sapinda* or by one of a superior *varṇa* is (known as) the *Kshetrāja* son. As says *Viṣṇu*.³
- 15 "Upon one who was appointed (to beget), a son begotten by a *sapinda* or "by one of a superior *varṇa* is the *kshetrāja*, the second" (128).

Yājñavalkya Verse 129

- In 'the house', *grhe*, of the husband, *prachakṣhama*, 'one secretly', born, is the *Gāḍhaya* son, so declared by *Manu* and others.
- 20 Upon an unmarried daughter while residing at her father's house, one secretly begotten by a man of the same *varṇa* is the *Kāmna* son, declared to be the son of the mother's father. As to what has been stated by *Manu*⁴ viz: "While in her father's house, the son which a daughter "causes to be begotten in secret, that one should know as the *Kāmna* son,
- 25 "and belonging to the husband (after marriage) as a son born of the "maiden", that has been declared by *Viśvarūpa* to be applicable when there exist the *Aurasa* and like other sons (129).

Yājñavalkya, Verse 130

- Upon a widow who has had sexual intercourse, or one who had no
- 30 regular intercourse, and who was married again, a son born is the *Pannarbhava* son, becomes the son of the progenitor. Similarly says *Kātyāyana*⁵: "After abandoning an impotent or a degraded husband, when a "woman secures another husband, a son born upon her is the *Pannarbhava* "son, is clearly of the same class as of the progenitor."
- 35 One whom the mother and the father give up and offer, such a one is the *Dattaka*. As says *Manu*⁶: "That (boy) equal (by caste) whom his "mother or his father affectionately give with (a libation of) water, in "times of distress, such a son is the *Dattaka* son" (130)

1. Dh. 6 II II. 3.14

2. Ch. xv. 3

3. Verse 800

4. Ch. ix. 127.

5. Ch. ix. 172

6. Ch. IX. 103.

Śūlapāṇi

Yājñavalkya Verse 131

One who is sold by the mother and the father and taken up as a son, such a one is a *Kṛta* son. Vide the text, "such a one whether of a different *varga* or a similar "

5

Manu¹ describes the son self-made ' But when one makes another as his son who is similar (in caste) and is acquainted with the right and the wrong, and who is endowed with the qualities of a son, such a one should be known as a *Kṛtrima* son "

Manu² describes the *Daltrima* son thus. ' He who is without his parents, or one who has been abandoned without a (proper) reason, gives himself (to a man) is called the son 'self given' " *Swayamdatta*.

10

Garbhaṁna has been described by Manu³ "Where a pregnant woman is taken in marriage, either (with her pregnancy) known or unknown, (the child in) the womb belongs to the man who weds her, and he is called *Sahodha* (131)

15

/(21) Having thus premised sons, chief and secondary, the Author explains the order of their succession to the heritage

Yājñavalkya, Verse 132 (2)

Among these, in the absence of the preceding, each next succeeding is a giver of the funeral cake and the inheritor of a share

20

Mitākshara —(22) Of these aforementioned sons of twelve kinds, in the absence of the preceding, each next in order, as enumerated must be considered to be the *pindadah*, giver of the funeral cake, i.e. performer of the *Srāddha*, and *ansaharā*, the inheritor of a share, i.e. successor to the effects

25

(23) If there be an *Aurasa*⁴ (legitimate) son and a *Putrika* (son by an appointed daughter) Manu propounds⁵ an exception to the seeming right of the *Aurasa* son to take the whole estate ' A daughter having been appointed, if a son be afterwards born, the division

30

1 ix 160

2 IX 177

3 IX 173

4 The reading in the *Mitāksharā* is *Aurasa putrika* *samavāye* i.e. when the legitimate son and the son of an appointed daughter co exist Mr Colebrooke translates—' If there be a legitimate son and an appointed daughter "—and adds in the foot-note "this passage is interpreted by *Vishnu* as *Bālambhūta* " But *Bālambhūta* distinctly refers to the passage as it occurs in the text &c (see p 174 l 15) ' *Aurasa-putrika* for *mitāk* *Samavāye* *ityarthah* " While *Vishnu* has (p 38 l 17) *Aurasa-putrika*, *putrikāyāśāśā* *andbhūta* *ityarthah* " Tes p. 147, l 8

- "of the heritage must in that case be equal : since there is no right of
 "primogeniture for a woman."¹ (24) So also, even in the case of
 others, a quarter share to inferior sons, even when the superior ones
 exist, has been ordained by Vasiṣṭha:² "When a son has been
 5 "adopted, if a legitimate son be (afterwards) born, the adopted son
 "shares a fourth part" (Here) the mention of 'the son adopted' is
 indicative also of others such as the son bought, the son made, and the
 rest by reason of the context.³ (25) Accordingly Kātyāyana⁴ says :
 "If an *Aurasa* son be born, the other sons take a fourth part⁵,
 10 "provided they belong to the same tribe ; but if they be of a different
 "class, they are entitled to food and raiment only." (26) "Those
 "who belong to the same tribe" *e. g.* the adopted and the *Kṛhetra*
 sons and the like, these when an *Aurasa* son exists, share a fourth part.
 But those who belong to a different class *e. g.* "the damsel's son,"
 15 "the son secretly born," "the son received with the bride," and
 "the son of a re-married woman," these when an *Aurasa* son exists,
 do not take a fourth part, but are entitled to food and raiment only.
 (27) Although there is a text of Viṣṇu 113 : "Exceptionable sons are,

1 This passage is obscure and is not in a line with the logical accuracy and perspicuity which are the invariable characteristics of *Bhṛṣṭa Vyākhyāṣa*. Taking the text of *Mānu* by itself it says that a female is not entitled to the rights of primogeniture. *Bālabhṛṣṭa* (p 174 l. 17) explains it by suggesting that it is meant to meet a position which may be taken on the strength of the rule that the appointed daughter herself is a son (गृहीतवत् इति द्वितीयविशेषः), while *Vyākhyāṣa* refers to the text of *Mānu* for showing that when an *aurasa* and a *pauṣṭika* compete, it may be urged that the entire estate should go to the *Aurasa*, led it not been for the rule of *Mānu* in IX. 134.

The *Subodhā* (p 58 l 17-23) has attempted to explain the passage thus "By this text of *Mānu*, the eldest does not get the preference share allowed to him "in the text (of *Mānu* Ch IX. 112 see above p 181 ll 5-7) Indeed, under this text "he is only entitled to an equal portion. Ordinarily an *Aurasa* alone is entitled to "the entire heritage, but by the text of *Mānu*—"The division must be equal"—the "*Aurasa* does not take the entirety and thus the *Pauṣṭika* takes a share. This seems to be the only way in which the two passages can be connected together."

2 Ch. XV 9 इत्युक्तमस्ति एव—"he (the adopted son) shall be the partaker of a fourth share."

3 *e. g.* इतिरुक्तमस्ति एव Tr "for they are equally adopted as sons." Colebrooke prefers this reading. 4 Verse 807.

5 This reading is followed in the *Madanapārijāta*, and *Vīramatodaya*. But the *Kaṭopara*, *Ratnākara* and other compilations read a "third part." Vido *Jāmāta Vāhana* O 10§ 13 Colebrooke

"a damsel's child, a son of concealed origin, one received with a
"bride, and a son by a twice-married woman, these never share the
"funeral cake nor the inheritance", still it is intended to prohibit a
fourth share when an *Aurasa* son exists. But if there be no legiti-
mate son or other (preferable claimants), even the damsel's child
and others succeed to the whole of the paternal estate under the
text 'In the absence of the preceding, each next succeeding &c."

(28) Similarly, although there is a text of *Manu* 'The
'*Aurasa* son alone is the (sole) heir of his father's wealth, but, as a
'matter of compassion he may give maintenance to the rest,' that too
must be considered as applicable to a case where the son adopted and
the like are hostile to the *Aurasa* son and devoid of good qualities
(29) Here a special rule regarding a *Kshetrāja* son has been
propounded by the same Author 'Let the *Aurasa* son, when dividing
'the paternal heritage, give a sixth part or a fifth, of the patri-
'mony to the *Kshetrāja* son': i. e. where there is hostility as well
as want of good qualities then a sixth part but
if only one of those defects exist, a fifth part, and
thus the two cases should be discriminated

(30) Although *Manu* having premised two sets of six sons, has
declared the first six to be heirs and kinsmen and the last six to be not
heirs but kinsmen viz: "The *Aurasa* son, as also the son begotten on a
"wife, the son adopted, and also a son made, a son secretly born and so a
"son cast off, are the six heirs, and kinsmen (159) The damsel's
"son, the son received with the bride, the son bought, as also the son
"begotten on a remarried woman, the son self given, and the son
"born of a *Sūdrā* woman are six not heirs but kinsmen (160),'
(31) that too must be expounded as signifying, that the first six may
take the heritage of their father's *sapindas* and *samanodakus* if there be
no nearer heir, but not so the last six (The tie of) kinship (*bāndha*
taṭvam) however, is alike in the case of both by reason of their being
Samānagotra and *Sapinda* and thus being capable of performing the
duty of offering libations of water and the like (32) It must be
thus expounded, for the mention of a given son in the following

- passage¹ is intended for any adopted succedaneous son: "A son
 "given away must never claim the family and estate of his natural
 "father. The funeral cake follows the family and the estate, and of
 'him who gives (away his son), the funeral offerings fail" (33) The
 5 right of inheriting their father's estate, however, is, without exception
 equal in the case of all in the absence of sons mentioned next above
 each, in the order of precedence, as the text² "Not brothers, nor
 "parents, but sons are heirs to the estate of the fathers," purposely is
 intended as affirming the succession of all subsidiary sons other than
 10 the *Aurasa* son, the right of the *Aurasa* son having been already
 propounded by the text³ "The *Aurasa* son alone is the (sole) heir
 "of his father's wealth", and the word heir (*dyaṁ*) being well-
 known as used to signify any successor other than a son as in (the
 expression) "The heirs also should be made to give &c" (34) The
 15 variation which occurs in the institutes of *Vaṁśītha*⁴ and others

1 Manu Ch IX 142 2 of Manu Ch IX 180 3 of Manu Ch IX 163

4 See *Subodhini* (pp 60-61 Tr p 101 ll 32 38, p 162 ll 1-34) Referring to this passage in the *Subodhini* Mr. Colebrooke adds the following note: *Manu* declaring the appointed daughter equal to the legitimate son includes her under legitimate is no (IX 165) and proceeds to define the remaining ten succedaneous sons (IX 165-178) But *Vaṁśītha* states the appointed daughter as third in rank (XVII-166) which is a disagreement in the order of enumeration. The same must be understood of other institutes of law viz. *Pishnu* 15 2 37 *Nārada* (13-44 40) *Devata* &c. How then is the succession of the next in order on failure of the preceding reconcilable? The author proposes this difficulty with its solution. His notion of the mode of reconciling is this: *Manu* declaring that the first set of six sons by birth or adoption is competent to inherit from collateral kinsmen on failure of nearer heirs but not so the second set, afterwards proceeds to deliver incidentally definitions of those various sons. It appears therefore to be a loose enumeration and not one arranged with precision. Accordingly *Manu* in saying "Let the inferior in order take the heritage" does not limit this very order but intends one different in some respects, and the difference is relative to good and bad qualities. The same must be used with the variations in other codes. Moreover what is ordained by *Lāyanaśāstra* is consistent with propriety. For the true legitimate son and the son of an appointed daughter are both legitimate is no and consequently equal. The son of the wife a son of hidden origin the son of an unmarried damsel and a son by a twice-married woman, being produced from the seed of the adoptive father and from the soil appertaining to him have preference before the son given and the rest. The son received with a bride, produced from soil which the adoptive father accepts for his own is placed in the second set by the authority of the text or because the mother did not appertain to the adoptive father at the time when the child was begotten. The whole is therefore unexceptionable.

respecting some one in both sets, must be understood as founded on the difference of having been¹ or not been endowed with qualities. (35) But the assignment of the tenth place to the son of an appointed daughter in Gautama's text², is relative to one differing in tribe. Therefore this is established, that in the absence of those (mentioned) in the preceding order, those following next in order will be entitled to the inheritance.

5

(36) As for the text³. "If among (several) brothers sprung "from one (father), one have a son, Manu has declared them all as "fathers of a male offspring on account of that son," that also is intended to forbid the adoption of others, if a brother's son can possibly be adopted, and not for setting up a claim as a son, as that would be inconsistent with the subsequent text (Yjn II 135) "Their sons, the *Gotrajas* and the *Ānāhins* &c."

10

Śūlapāni

15

Yājñavalkya, Verse 132

He becomes entitled to offer *puṣṭi*, *śrāddha*, and the like, and also is entitled to take the wealth

When, however, the brother's son exists, the *Kṣhetraja* and the like others substitutes of a son are not entitled, as says Manu⁴ "If among "brothers born of one father, one have a son, all these (others) through "that one, are (regarded) as having a son, so Manu has declared" Then also, in the absence of brother's sons, should be made the sons such as the *Kṣhetraja* and the others

25

Of the co-wives of one husband also who are without a son, the son of a co wife is the son himself, as says Manu⁵ "Of all the wives of a "one, if one have a son, Manu declares them all (to be) mothers having "sons through that son" 'Wives of one': *e* of one husband (132)

30

(37) The Author next adds a restrictive clause by way of conclusion to what had been stated

35

Yājñavalkya, Verse 133 (1)

This law is propounded by me in regard to sons equal by class.

Mitākṣharā—(38) Only among sons equal by class, *ayam vidhah*, *this law*, *i e* (the one) expressed in the text "in the absence of the

1 *पुण्य* &c (p 90 l 14) have a reference to the sons and are adjectives qualifying that term
 2 Ch XXVIII 31
 3 Of Manu Ch. IX 182 4 IX 182 5 IX 183 See Vishtan also XV 41

“preceding, the next following in the order (of enumeration) &c.”
and not among sons differing in class (39) Here, moreover, the
damsel's son, the secretly born son, the son received with a bride,
and a son by a twice-married woman, are deemed of like class,
5 through their natural father, but not in their own characters, as it
has already been stated that they are not within the definition
of tribe and class (40) So also, since issue procreated in the
direct order of the tribes, as the *Mūḍhāvashita* and the rest, are
comprehended under legitimate issue, it must be understood, that, on
10 failure of these also, the right of inheritance devolves on the *Ishetrāja*
son (of the wife) and the rest

(41) But the son by a *Sūdrā* wife, though legitimate, does not
take the whole estate even on failure of other issue Thus Manu
says: “But whether a man have sons or no sons (by wives of
15 ‘other classes’), no more than a tenth part must be given to the
“son of a *Sūdrā* woman, according to law” (42) Whether he have
sons: or whether he have existing the male issue of a regenerate
tribe, or “have no sons”: or have no issue of regenerate tribe, in
either case, upon his demise, the son of the wife or other (kind of son)
20 or any kinsman (*sapinda*) shall not give to the son of the *Sūdrā* more
than a tenth part of the father's estate (43) Thus it appears from
this very text, that the son of a *Kṣātriyā* or a *Varyā* wife takes the
whole of the property on failure of issue by women of equal class

[Colebrooke Sect. XII]

[Rights of a son by an unmarried female in the case of a
25 *Sūdrā*'s estate.]

(1) The Author next delivers a special rule concerning the
distribution of the estate of a *Sūdrā*

1 Ch IX 164 The author of the *Subodhini* reconciles this text of Manu
with that of Yājñavalkya (II 125 p 1033) above in which it has been laid down
that the son born of a *Sūdrā* woman is entitled to one share, by noting that one
share in that text of Yājñavalkya is obviously one of the 10 shares into which the
estate is to be divided under that text viz 4, 3, 2 & 1 (See *Subodhini* p 61 II
22 25 Tr 153 II 31 35 & p 154 II 11)

Yājñavalkya, Verses 133 (2), 134

A son begotten by a Śūdra even though upon a *dāśī* (female slave) may take a share by choice [133 (2)]

But after the death of the father, the brothers should make him a half-sharer; if he have no brothers he may take the whole property, unless there are sons of daughters (134)

1 Who is a *Dāsī*—The woman entitled to be called a *Dāsī* or an *avaruddhā strī* (a permanent concubine) must be one with whom the connection is open and who lived as a member of the family. Thus a Mahomedan prostitute cannot be called a *dāśī* though she was a permanent concubine. *Mt. Hardi vs Narindra Bakramji*, 1 Luck 184. See also *Pajun Nath Das vs A. Sita Chandra Dey*, 48 Cal 643, (F B). *Bai Monghidas vs Bai Nagubai* 24 Bom L R 400—47 Bom 401—53 I A 153.

It is not however, subject to the further condition that a marriage could have taken place between them. *Soundararajan vs Arunachalam*, 39 Mad 136. Permanence of the relationship is sufficient. *Kama Rajadharma vs Papammai* 48 Mad 805.

A Brahman mistress of a Śūdra is not a *Dāsī*; nor the son a *Dāsiputra*, he has no right to the property of the father, *Ramchandra vs Hanumanth* 60 Bom 75.

Nor can a kept mistress whose husband is alive be called an *अवर्द्धा* *Amardalā* vs *Chandrabai* 48 Bom 203.

The question as to the status and the share of a *Dāsiputra* was referred to and discussed in the following cases. In almost all these cases the passages from Yājñavalkya and Vyākṛāntara's commentary of the *Mitākṣharā* thereon were referred to and discussed. The following is a short summary of the decisions having a special reference to this part of the text.

In any view of the texts, an illegitimate son is looked upon as a member of a family, entitled to some, if not all the rights of a member as such. He is entitled to maintenance in those cases where he does not succeed by survivorship or inheritance. In this respect Hindu law differs from English law in so far as it does not treat him as a *filius nullius*. See *Hargobind Aneri vs Dharam Singh* 6 All 329. *Rahi vs Gound* 1 Bom 97. Among the Śūdra caste, the illegitimate sons in default of legitimate sons are entitled to inherit. *Inderam vs Ramaswamy* 13 M I A 141. *Sadu vs Baiza* 4 Bom 37 (F B).

The illegitimate son of a *Āśhtrīya* by a *Śūdrā* woman is not a *Śūdra*, but of a higher caste called *Ugra*. *Brindasana vs Radhamani* 12 Mad 32.

N B—An illegitimate daughter is not entitled to inherit the claim of the sons being based on texts which specially mention them, the daughters not being so mentioned. *Bhilya vs Balu* 32 Bom 562—10 Bom L R 736.

But a mother can take as heir to her illegitimate son. *Jagannath Gyr vs Shet Bahadur Singh* 57 All 80 at p 166 (a case of Gosais).

* PAGE 91.

Mitākṣharā:—(2) A son begotten by a *Sūdra* on a *dāsi* (female slave), obtains a share *kāmatah*, by choice, i.e. by the option, of the father. But, after (the death of) the father, if there be sons of a wedded wife, then these brothers should make that son of the *dāsi* (female slave), a half-sharer, i.e. they should give him a half from their

(Contd from last page)

In *Saravati vs Manu* 2 All 134 the offspring of a kept woman or a continuous concubine was held to be on the same level as to inheritance as the issue of a *dāsi* (female slave) by a *Sūdra*, and he was held capable of succeeding to the occupancy holding of his father as a "male lineal descendant" within the meaning of the Agra Tenancy Act, 1901. *Ramlal vs Jamma* 30 All 508. In *Jogendra Bhupati vs Nityanand* 11 Cal 713 and 18 Cal 151 (P O) 17 I A 128, both the High Court and the Privy Council recognised the right of an illegitimate son as a coparcener with his legitimate brother in the ancestral estate and he was held to be entitled to take by survivorship even in the case of an impartible estate. He does not, however, acquire a joint interest in the property with his father in the ancestral family property. It is only after the father's death that his right commences, so that if the property is disposed of by the father during his lifetime, he cannot claim a share in it after his death. *Pam Saran vs Telchand* 28 Cal 195. Nor does the illegitimate son become a coparcener in the fullest significance of the term, and therefore he is not entitled to claim by survivorship against the collateral relations of the father. *Krishnagya vs Muttusami* 7 Mad. 407. *Peruvathi vs Thirumalai* 10 Mad 334.

In a case of disputed succession among *Sūdras* to an Impartible estate where the claimants were sons by two wives of the same caste, but of different grades, the son by a wife though junior, but of a superior grade, was held to be entitled to preference. *Ramasami vs Sundaralingasami* 17 Mad 422.

The *Dāsiputra* is entitled to maintenance among the regenerate classes. It does not cease when he comes of age. But he is not entitled to his marriage expenses. *Motchand vs Chandrabai* 26 Bom L R 488.

1 And this is made clearer by *Bāṇabhāṭya* (p 182 li 22 23) & *Satadharma* (p 61 li 26) "From the entire estate, a half of what would be regarded as his share i.e. one half of the amount allotted to a legitimate issue."

He is entitled to one half of the share to which he would have been entitled had he been legitimate. The widow by marriage and the sole illegitimate son take equally. *Kamammal vs Venuvatha Swami Aachar* 20 Bom L R 577 = 50 I A 32. See 18 B L R 70 = 40 Bom 369.

Members of legitimate descent cannot claim heirship to a line of illegitimate descent. *Maharajah of Kolhapur vs Sanjaram Ayyar* 48 Mad 1.

own allotment. However, should there be no sons of a wedded wife, the son of the *dāsi* (female slave) shall take the whole estate, provided there be no daughters of a wedded wife, nor their sons. But if there be such, the son of the *dāsi* (female slave) participates for half a share only. (3) From the mention of a *Sūta* in this place, moreover, (it follows that) the son begotten by a man of a regenerate tribe on a *dāsi* (female slave) does not obtain a share even by the father's choice nor even a half, much remote (is the chance of his claiming) the whole. But, if he be docile, he receives a bare maintenance [133-134]

Vāramitrodāya

10

The Author states the characteristics of the twelve sons, by the verses beginning with 'Aurasa' etc

Yājñavalkya Verses 128-134

Dharmapatni, 'a lawfully wedded wife', i.e. of the same *varṇa* married according to (the dictates of) law, of her, born from the husband is the *Aurasa* son. Here (the condition of) belonging to the same *varṇa*, by reason of its relating to the twice born, is intended as spoken of as referring to the three *varṇas* such as the *Brahmana* and the rest. Otherwise according to *Parijata* sons of the *Kṣatriya* and "*Vaiśya* wives married to a *Brahmana* and born of him may not be included among the twelve kinds of sons. By reason of his being procreated from the breast (*uras*) of the husband, he is (called) the *Aurasa*"

"He who is born of her, that son shall be my son, under this rule of an agreement stated by *Vasiṣṭha*,¹ a maiden who has been married is called the *Putrika*, a son born of her is the *Putrikāsuta*, thus his characteristic has been stated as derived from a parity of expression. Such a one, moreover, is equal to an *Aurasa*, is entitled to take the heritage of the maternal grandfather, and to offer equal rites to him. In this connection, *Manu*² states a special rule. "To the mother first should the *putrikāsuta* offer a *pinda* the second, however, to her father, and the third to the father's father"

One born from one appointed in regard to the land of another, whether of the same *gotra* or of a different *gotra*, is the *Kṣhetraja*, the son of the owner of the land. Where, however, an arrangement has been made

as e.g. "Whatever issue is begotten on this shall belong equally to both of us", there, he is the son both of the owner of the seed as well as of the soil. This is the meaning of the last verse. That has been stated by Manu "Where by a special compact a field is made over to another
5 "for (sowing) the seed, of that (i.e., the produce of the seed) the "participants in this world are considered to be both the owner of the "seed as well as of the soil (128).

Grhe, 'in the house', upon the wife by another *prachchhanna*, 'secretly', i.e. even without an appointment, as the result of a conception from a secret (sexual) connection *uppanna*, a son (thus)
10 'produced,' such a one, however, is declared to be *Gudhaja*, 'one secretly born'. In this connection Manu² (says) "One in whose "house a son is born, and it is not known by whom he was begotten, "such a one being born secretly in the house, belongs to him on whose
15 "wife he is born" *Taiṣa*, 'wife', i.e. the wedded wife.

On a maiden i.e. on an unmarried daughter, the son born is the *Kāmna*, such a one is the son of the mother's father. vide Viṣṇu :
"By him, the mother's father becomes 'the father of a son', he should
"offer (to him) *pṛṣṭa* and take (his) property. If upon marriage
20 the husband be without an issue, even of him such a one is (entitled to be) a son, vide this text of the *Brahmapurāṇa* "If from one who "has been taken in marriage, a son was born (while) in the father's "house from one of the same *śāra*, such a one is the *Kāmna* son again "of him to whom she is given (in marriage) (129)'

One who is married again is 'a remarried woman' *Punarbhāḥ*, upon her whether de-flowered i.e. consummated, by the previous husband, or undeflowered i.e. not consummated, a son born is called *Punarbhāṭa*, 'the son of a re-married woman.' Here Kātyāyana²:
25 "One born from her is the *Punarbhāṭa*, and it is clear he is the son
30 "of the progenitor."

The father, or in his absence under his permission, the mother, the son whom he (or she) may, out of affection, give with (the libation of) water to another, such a one becomes the *Dattak*: 'adopted' son of the acceptor. As says Manu¹ "The heritage and the *gotra* of the
35 "genitive father the son given shall not take, the (right of offering) "pṛṣṭa follows the *gotra* and the (right to) inheritance, from one who "gives away, the exequial rites recede. *Ścadhā*, 'the exequial rites' " i.e. the *śradhā*, the funeral and allied rites (130)

Tābhyām, 'by the two', i. e. by the mother and the father, *vikritāḥ*, 'sold', that son who was *Kṛita*, i. e. 'bought' becomes (the son) of the purchaser.

Kṛtrimaḥ, 'a son made', under a request made by oneself, viz. 'be my son', and agreed to thus, viz. 'I am thy son', one accepted is a *Kṛtrima*, i. e. 'a son made.' By the use of the word *cha*, 'and', is added that it was 'with the consent of the mother and the father'; since while they are living he is dependent on them. 5

Even without a request, in the absence of the mother and the father, or one who has been abandoned, one who *swayam*, 'himself', offers as a son, such a one is *Swayamdatta*, 'a son self-given', is the 'son of the acceptor'. 10

While in the womb, by reason of the mother's marriage only, one who becomes the son of the parents (thereafter) married, becomes the son of the husband and is called *Sahodhaja*, 'a son received with the bride.' 15 That has been stated by *Manu*: "Where a pregnant woman is married, "either knowingly or unknowingly, to the husband who weds (her) "belongs (the child in) the womb, and he is also called *sahodha*, "the son "received with the bride" (131).

One, however, who by his parents *utsṛṣṭo* 'has been abandoned', or owing to their inability to maintain him has been given up, and by another is taken up as a son, such a one (becomes) the son of the acceptor known as *Apavidḍha*, 'a deserted son', (132). 20

Eṣāṃ, 'of these', twelve sons, *(pūrvapūrvābhāve*, 'in the absence of the one preceding', *paraḥ paraḥ*, 'each one next succeeding', becomes *pinḍadāḥ amśaharaiccha*, 'the giver of the (*pinḍa*) funeral cake, and the inheritor of a share' also. 25

The word *amśa*, 'share', in the case of a *putrikā* and *kṣhetraja* means the entire share, under the text of *Lukhita* and the *Brahmapurāṇa*, and also vide the text of *Kātyāyana*: "When an *aurasa* son is born, the "(other) sons of the same *varṇa* are entitled to a third share; while "those not of the same *varṇa* receive food and raiment". 30

Even in regard to other sons of the same *varṇa*, *savarna*, viz. the *dattaka*, *kṛtrima*, *gūḍkoṣṭhanna* and *apavidḍha*, the word *amśa* has the sense of the entire share. "The *aurasa* son alone shall be the "owner of the paternal estate; as for the rest, in order to avoid harshness, 35

"one may give maintenance," this text of Manu', it should be understood, has application where the *Aurasa* son is endowed with good qualities and the others are worthless [132 (2)].

- 5 *Ayam vidhah*, 'this law,' i. e. 'in the absence of the one preceding, each one next succeeding' etc. *sajātīyagṇu*, 'in regard to (sons) equal by caste,' i. e. the sons of the (first) three *varnas*, *mayotah* 'has been propounded by me'. In regard to those not of the same *varna*, even if there be a *putrikāputra*, the *hṣhetraja* son of the same *varna* is entitled to the inheritance, thus should be observed the arrangement in regard
- 10 to the rule, in consonance with the text of Kātyāyana cited above [133 (1)]

- Sudra*na, 'by a Sudra' however, *dāsyam*, even though upon a *dasi*, i. e. upon a *sūdra* woman not married, the son *jaiś*, 'born', *kāmatah*, 'by choice', i. e. at the option of the father, may be made the partaker of a
- 15 share equal to other sons

- Mṛte putari*, 'after the death of the father', when a partition is made, *bhratarah*, 'the brothers', i. e. the sons by the married wife, *tam*, 'him', i. e. the son by the *dasi*, should make a partaker of a half share. The *dāśputra*, when there are no sons by a married wife, and
- 20 in the absence of the sons of the daughters of the father, i. e. of the daughters' sons, and by the *a fortiori* reasoning, in the absence of the daughters, *sarvam*, 'the entire property of the father, *haret* 'may take', [133 (2), 134]

S'ūlapāṇi

25

Yājñavalkya, Verse 133

This law which has been propounded in regard to the *Aurasa* sons and others, should be understood as applicable to sons of the same caste, with the exception of the 'son brought'

- Dāgṇim*, 'upon a *dasi*', *sūdraṇa jaiś*, 'one begotten by a *sūdra*,' at the
- 30 desire of the father becomes entitled to a share like other sons (133)

Yājñavalkya, Verse 134

- Mṛte tu putari* 'when the father, however is dead', the sons of the father by a wedded wife, should make the son by a *dasi*, the partaker of a half share. If sons of that description or if a daughter's son of that description
- 35 do not exist, then he alone should take the entire patrimony (134)

Mitākṣharā :—(3) He who has no son, of any (sort) among the twelve descriptions above stated¹ is *aputraḥ*, one having no male issue. Of such a man having no male progeny *aputrasya*,² and *swaryāśasya*, of one who has departed for heaven i.e. who has departed for another world, *dhanabhāḥ* the heir or successor to the property, is that person, *śāhā* among such as have been here enumerated viz., the wife and the rest, *uttara* *uttaraḥ* who is next in order, *pūrvasya* *abhāve*, on failure of the first mentioned respectively. Such is the connection (of words in this sentence)

(4) *Ayam vidhāḥ*,³ this rule, about the taking of heritage or the order of succession must be understood *sarveshu varneshu*, as extending to all tribes, whether the *Murhū* *ikta* and others in the direct series of classes, or *Sūta* and the rest in the inverse order, and as comprehending the several classes the Brāhmanas and the rest

(5) Among these first, the wife takes the estate. *Patni* *Uye*, (4) The wife signifies a woman espoused in the performance of the nuptial rites, conformably with the etymology⁴ of the term as implying a connexion with religious rites, moreover, the singular number has been used with a view to include

1 i.e. in verses (128-132) above on page 1015 above

2 The word 'son' *putra* is used here in an extended sense. See *Balīśa Singh vs Lala Singh* 34 All. 670. See *Balaubhāṭṭa* p. 187 l. 27 "अपुत्रं पुत्रं च"

3 The verses 135 and 136 of *Īśānārāyaṇ* given above indicate the general rule of succession to the estate of one who leaves behind him no male issue. *Īśānārāyaṇ* first explains generally all the words in these verses. After that he takes the case of each claimant, and after examining other texts for and against the right of inheritance in each case deduces a conclusion which is to be accepted as his. The division by Mr. Colebrooke of this portion of the *Mitākṣharā* into several sections has been from this point of view. Thus §§ 5-30 of sect. I (pages 91-93) cover the discussion as to the right of a wife. (parts)

Sect. II of the daughter & daughter's son

III The Parents

IV The Brothers

V The Gotrajas

VI The Bandhus

VII The Utterior heirs

4 i.e. as contained in *Patni* *Uye* rule (at 4.1.33) "पत्नीं वसतेष्वेति" "The substitute *पत्नी* replaces the final *ग* of *पति* before the feminine affix (*पति* *पति*), when the word so formed indicates 'a wife who takes part in the sacred acts of her husband'. Thus it would appear from a strict interpretation of this rule that if a man has

- * "the wealth of her husband, who is not¹ unfaithful, and failing her, "the daughter (inherits) if unmarried." And again : "Of a man (who "has died) leaving no male issue, the wife born in an Ārya² family, "or even³ the daughters, failing her the father, the mother, the
5 "brother⁴ and⁵ his sons are pronounced to be the heirs". Also Bṛhaspati⁶ : "Notwithstanding there be kinsmen, a father, a mother or a uterine "brother be present, the wife of a deceased man, who left no male "issue, shall take his share."

- (7) Passages, adverse to these⁷, likewise occur. Thus Nārada⁸ has
10 stated the succession of brothers, though a wife were living, and has directed a bare maintenance to the widows thus : "Among brothers, if "any one die without issue⁹, or enter a religious¹⁰ order, let the rest of the "brothers divide his property excepting the *strīdhana* (of his wife). They "should make provision for the maintenance of his wives till their death,
15 "provided they preserve unsullied the bed of their lord. They may

1. Colebrooke translates, "provided she be chaste."

This also includes by implication the other condition that she should not be opposed to the husband (see Bālabhāṭṭi p. 189 l. 13.)

2. As opposed to one born in a non-Āryan family. Bālabhāṭṭi (p. 189. l. 15) also observes that "birth in an Ārya family" does not mean mere birth, but it means birth in a good family when the marriage was in the *Anuloma* form. It is to be noticed that both *Viśvāśara* and *Bālabhāṭṭi* admit by implication that wives from other castes were also entitled to be called *Patnis*. Colebrooke translates *सत्यकुलजा* as "of honest family."

3. By the use of the word (*Apī*) "even" daughter's sons are also included (Bālabhāṭṭi p. 189)

4. The word "brother" also includes the sisters (Bālabhāṭṭi p. 189.)

5. The addition of (*Cha*) 'and' brings in (their) daughters also. (Bālabhāṭṭi).

6. Ch. XXV. 648

7. These i. e. the passages cited above (*Subodhini*). Colebrooke tr. "adverse to the widow's claim."

8. Ch. XIII. 25-26.

9. i. e. without male issue. Bālabhāṭṭi.

10. The Sanskrit word is *pṛavrajat* i. e. become a *Sanyāsi* and thus enter the fourth and last of the orders viz. *śrāmaṇa*, *śāśṭha*, *śāśṭha* and *śāśṭha*.

"however, cut it off in the case of those who behave otherwise." That the estate of a sonless man goes to the father or the brother has also been shown by Manu³ "Of him, who leaves no son, the father shall take the inheritance, or the brothers." : "Of a son dying childless, the mother shall take the estate, and if the mother also be dead, the father's mother shall take the heritage," by this text⁴ he has likewise shown the mother's right to succession, as well as the paternal grandmother's : thus Śaṅkha also : "The wealth of a man who departs for heaven, leaving no male issue, goes to his brothers; failing them, his parents may take it, or his eldest wife," has thus declared the right of succession in order (of succession) of the brothers, the father, and also of the eldest wife. By Kātyāyana⁵ also (has been said) : "If a man die while separate, and there are no sons, let the father take his property, or the brother, the mother, or the mother of his father successively."

(8) An adjustment⁶ of these and other⁷ contradictory texts has been drawn out by Dhāreśwara thus : the texts⁸ which lay down the rule that 'a wife shall take (the estate)' have reference to the widow

1. अविश्य. (Āchchhadyuh) : s should either not allow if the wives are unchaste or put a stop to the allowance after they become unchaste. This passage may be marked in connection with the maintenance of those widows who subsequently become unchaste.

2. This passage also occurs in the Diyabhāga XI 1 48, where the word *Stri* has been used in reference to "women who were actually espoused, but had not the rank of wives," while Viṇāśesvara uses it pointedly with reference to wives using the word *patei*. See *Ponnappa vs Pappasayyengar* 4 Mad. at p 32, *Gangu vs Chandrabhagabai* 32 Bom. at p 286, *Lakshmi vs Casaban* 5 Bom. 122; *Savitribai vs Lurmbai* 2 Bom. 612 32, *Subramaniga Pandya Chokka Telavar vs Siva Subramanya Pillai* 17 Mad. 300

3. Ch IX. 185

4. Ch IX. 217. 5 Verse 928

6. This is in accordance with the general rule that when there occur passages which are of equal weight but which are contradictory, the application must be adjusted, as otherwise the rule of option might follow. *गुणवन्तिने ह विद्यते*. See note on *विद्यते* & *विद्यते* (on p 35 n 4 ante.)

7. i. e. the texts cited above and those texts following viz. *Gautama*, *Manu*, *Varaṇṣaka*, *Nārada* & *Yājñavalkya*.

8. i. e. of *Vedha-Manu*, *Bṛhadāraṇya*, *Kātyāyana* and *Bṛhaspati* cited above pp 1067, 1068.

of a separated brother, and that also provided she be solicitous of authority for raising up issue to her husband:

1
5 Whence² is it inferred, that a widow succeeds to the estate provided she seek permission for raising up issue, but not if she remained alone by³ herself? From the text⁴ (above cited) viz. "The father shall take the inheritance of him, who leaves "no son," and other similar⁵ passages. For here a rule of adjustment and a reason for it must be stated⁶ but no other rule of adjustment or reason exists. And also on the authority of the text of Gautama⁷

1. *Niyoga* means raising up an issue to the deceased husband by appointment, see Yājñ II 127 above and notes (p 1039) II 26 28)

2 This is the doubt raised by *Dhātreśvara* the solution of which is given immediately by him. Dhātreśvara's view is ' that a widow is entitled to inherit her husband's property only when she obtains authority to have male issue raised up to her husband by means of *Niyoga* (levirate) that if she obtains no such authority, she cannot inherit but is merely entitled to maintenance, and for this *Dhātreśvara* relies on the above quoted text of Narada and also that of Yājñavalkya (II 142) Vijnanesvara combats this view and shows further on that *Dhātreśvara* has misapplied these texts. See observations of Chandavarkar J in *Ganga va Chandrabhagabai* 32 Bom 275 at p 282 sqq

3 *Na svatantrāyā* 'and not if she remain independent' Colebrooke translates "but not independently of this consideration" But the word *Svatantrā* qualifies the widow (see Balambhatji & Subodhini p 62 II 17 18)

4 i.e. of *Mānu* Ch. IX, 185

5 i.e. of *Nārada* (XIII, p 25 26) &c "from passages" i.e. on account of the contradiction appearing in these texts

6 Colebrooke "Sought"

7 Ch XXVIII 21 22 *Dhātreśvara* does not properly quote the text of *Gautama* nor has he properly interpreted it. The text properly reads thus "विद्योतयित्वा विधिं मनोरे की वात्सव्यस्य (21). की वा विद्युत (22)". There are two *Sūtras* combined here. *Sūtra* No 21 says 'Let kinsmen related by pinda &c. take the heritage, or the widow of one dying without issue. The *Sūtra* (22) says 'Or she may seek to raise up issue to him'. But what *Dhātreśvara* does is that he stops after the clauses of kinsmen &c and begins with the 'widow' and joins that portion of this *Sūtra* to the next converting the whole into a conditional clause. *Vijnānesvara* has interpreted *Gautama's* text properly further on (p 1075 II 3-7) while he is refuting *Dhātreśvara's* position.

- "who takes care of his deceased brother's estate, and¹ his widow, such a
 "one after raising up a son for his brother, shall deliver that property
 "even to that (son)" By this text he indicates thus that even when
 a brother who was separate in estate dies, his wife's claim to his
 estate is only through² an issue, and not otherwise So in the case
 of undivided property likewise (the same Author³ says): "Should a
 "younger brother have begotten a son on the wife of the elder
 "brother, the division must then be made equally thus is the law
 'settled'⁴ (11) Varishtha⁵ also by the text "An appointment shall
 "not be made through covetousness for the estate", forbidding an
 appointment to raise up issue to the husband if sought through
 covetousness for the estate, thereby intimates that the widow's claim
 to the estate is only through an appointment, and not otherwise
 (12) in the absence of an appointment, however, a widow is only
 entitled to a bare maintenance, *vide* the text⁶ of Nārada "They
 'should make provision for the maintenance of their wives till their
 "death (13) The same it is pretended,⁷ will be declared later
 on by the Lord of the Yogis "And their childless wives, conducting
 "themselves aright, must be supported; but such as are unchaste should
 "be expelled and so, indeed, those who are perverse (14) Moreover,
 since the wealth of a regenerate man is designed for religious uses, the

1 *Cha* (च) is found in the text of *Manu*, and it seems was also the reading in the copy adopted by Mr Colebrooke It is better reading than *śā* (श) 'or' *Aullāḍa* in his gloss on this verse adds that this text has a reference to the estate of a separated brother as the one in IX. 120 obviously contemplates a joint estate (see also *Subodhin* p. 62 l. 25 & *Balambhatti* p. 190 l. 31)

2 i.e. the son so begotten

3 'Through'—*Dvārā* (द्वारा) i.e. she has no independent right in herself

4 i.e. *Manu* Ch. IX. 120 (see note above)

5 i.e. the objector says that even *Manu* has laid down the adjustment of the conflicting texts

6 Ch. XVII. 65

7 Ch. XIII. 26 (see above p. 1068 ll. 11-14)

8 *Aśa*—This particle is used in many senses Here it indicates disapprobation

The same sense is maintained in the next quotation of an unnamed writer whom *Yājñavalkya* refers to as *Aśāpi* (अशापि)—which the author of the *Subodhin* notes as 'an indication of disrespect', (p. 5. l. 23 also *Balambhatti* p. 181 l. 8)

9 i.e. *Yājñavalkya* II. 142

succession of women to such property is unfit, because they are not competent to the performance of religious rites accordingly it has been declared by some¹ author "wealth was produced for the sake of solemn sacrifice, and they, who are incompetent for the celebration of these (rites), are not entitled by any property², but (may) receive food and raiment. Wealth has been ordained for sacrifices. Therefore it should be allotted to places concerned with religious duties and not to women, fools or the irreligious"³

(15) That⁴ is wrong, for authority to raise up issue to the husband is neither specified in the⁵ text, 'The wife, the daughter &c' nor is it suggested by the premises⁶. Besides, it may be here asked, is the appointment to raise up issue a reason for the widow's succession to the property, or is the issue borne by her, the cause of her

1 Name unknown. See note above. *Bālabhāṭṭa* remarks that by the use of the expression *Aśāṅga*, disrespect for the writer is indicated, and it should be noted that therefore the name of the writer has not been mentioned (p 191 l 13)

2 The word in the text is *Rikṣa* which means heritage, or inheritance

3 Here ends the summary of *Dhātareṣa*'s argument

The argument of *Dhātareṣa* in short is this (1) The wife's capacity to take her husband's estate depends on her desire to beget issue for him and in support of this he cites *Manu*, IX 180, 146 120, *Gautama* Ch 28/22-22, *Varaṇṇa* 17-18, *Nārada* 13-26, and (2) As the wealth of the twice-born is intended for the performance of religious rites, and as women are incompetent for the same, the devolution of wealth upon the wife is conditional as above

4 *Vijñāneśvara*'s refutation of it commences from 'That is wrong'. He does it in several ways, taking each text and explaining its meaning until he arrives at the conclusion at the end of his argument viz 'Of a man dying without issue separate and unmarried his married wife, leading a continent life takes the whole estate' (see further on page 1087 ll 9-11)

For a local analysis of the whole position see *Siddhānta* (63 ll 9-18 Tr p 157 ll 30-34)—'Indeed for the succession of a wife to her husband's estate, is the appointment the cause or, the issue begotten thereby, or is it a special reason, and again of the special reason is appointment the principal cause or the issue or are both of equal importance—these are the six ways in which this question may be looked at, &c' see Tr p 157 ll 30-34

See the observations of *Mattaswamy Aiyar J* in *Manu vs Chāṇanaka* 8 *Md* at pages 118-127, and also *Arasina vs Sami* 9 *Md* at p 74 &c

5 i.e. of *Yājñavalkya* II 155 (p 1065 above).

6 i.e. Nor it is pertinent or relevant.

succession? Of these if the appointment alone be the reason, it would follow that, even without having borne a son, she has a right to the estate, and the right of the son (that¹) born to the estate would not follow. On the other hand if the offspring alone be the cause (of her claim) then in that case as the son alone has a right to the estate, the law (of inheritance) should not be stated beginning "with the wife &c."

(16) As to what is said that women have a title to property,

either through the husband, or through the son, and not otherwise, that also is wrong, for it is inconsistent with the following² and other similar texts,

"What was given before the nuptial fire, what was presented in the bridal procession, what was given in token of affection, what was received by the woman from her brother, her mother, or her father, are denominated the sixfold 'property of a woman' "

(17) Moreover, on failure of sons of all descriptions, the law (of succession) has been stated commencing with "the wife, daughters &c." Now here, by affirming the right of a widow, who³ has been appointed to raise issue, the right of the *Kṣhetraja* son himself to succeed to the estate is virtually affirmed. But that had already been declared⁴ and therefore the wife ought not to be mentioned in the law of succession to (the estate of) one who leaves no male issue

1 Colebrooke translates "subsequently produced", but the expression in the text is *Upannasya* which would mean "born." Having regard to the context there would be much difference in meaning in the two interpretations. As the assumption would concede to the widow the right of succession on the ground of appointment, she must be one who has already taken a step in the matter of the appointment, and who would be antedating the birth of the issue. And her taking a step in the matter of begetting a son for her husband would be a condition precedent for the estate to vest in her. See the answer in refutation by Viṣṇuswara vi. निवृत्तयोः पनस्यस्य वदन् &c.

2 *Mān. Ch. IX, 104*

3 In the original, the expression has been used as qualifying the widow a sort of a condition precedent to her succession appears to have been laid down. It means—"by declaring the right of succession of a widow on the ground of her appointment &c."

4 The right of succession of sons of all sorts has been independently treated in a separate place and in that connection the right of succession of the *Kṣhetraja* son also has been examined (see p 10461 15 &c. above). It would therefore be inconsistent to suppose that the author wanted to treat the right of that son again here. (See Balambhāṭṭa 191-192 and Subodham 92.)

(18) But, it is alleged, the right of the widow, who is authorized to raise up issue to her husband is deduced

The interpretation of Gautama's text examined and proved to be erroneous

from the text of Gautama¹ "Of a childless man let kinsmen, connected by *pinda*², by family name, or by descent from the same patriarch share the heritage, or the widow, or she may

seek to raise up offspring (to him)" This too is erroneous, for it cannot be inferred as the meaning of this (text) that, 'if she seek to obtain offspring, (then alone) she may take the goods of a childless man', but that "persons connected by *pinda*, by family name, or by descent from the same patriarch, share the effects of one who leaves no issue, or his widow takes the estate, and such widow may either seek to obtain progeny, or may remain chaste"³ This is only an alternative

course prescribed for (being adopted or not by) her In other words, an alternative cannot be converted into a conditional For the particle *vā* 'or' denoting an alternative course, does not convey the sense of *yadi* 'if' Moreover, it is fit, that a chaste wife alone should succeed

* Page 93

A continent wife preferred

to the estate, and not one who has sought appointment, as she has been censured by the law as well as by (the opinion of) the people The succession of a chaste woman alone has been expressed in the text⁴ "The widow of a childless man keep unsullied her husband's bed, and persevering in religious observances shall herself present his funeral oblation, and also obtain his entire share"

And an (authority to raise up issue by) appointment has been condemned by Manu by the following⁵ "By regenerate men a widow must not be authorized

1 Ch XXVIII 21 22 note above p 1065, see *Jedhamani* vs *Velumangar* *Mudhar* 31 Mad 100 at p 106 *Ganapat* vs *Tularam* 36 Bom 88-90 13 Bom L R at p 862 2 See note above on this at p 1071

3 कृत्वा—continent, leading a strictly chaste life 4 i. e. two modes of conduct are suggested to her She may either seek male issue by means of appointment or she may remain chaste (see *Dalambhatti* p 192 l 30 *Subodhini* p 64 ll 5-7) Colebrooke translates, "This is an instruction to her &c."

5 of *Vrddha-Manu* see p 1060 ll 4-7 above

6 Ch IX 64

"to (conceive by) any other (than her husband); for they who
"authorise her to (conceive by) another, violate the enternal law,"
and similar other texts.

(19) As for the text of Vasīṣṭha¹: "An appointment shall not
"be made through covetousness for the estate." This also must be
interpreted to mean that, "if the husband die unseparated from his
"co-parceners or re united with them, she has no right of succession to
"the estate; and therefore an appointment to raise up issue must not
"be resorted to for the sake of securing the succession to her offspring."

(20) As for the text of Nārada². "And they shall allow maintenance for
"his women till the end of their lives," since in the text³: "The shares
"of re-united brethren are considered to be exclusively theirs," the re-
union of co-parceners had been premised, that too⁴ must be understood
as only suggesting a maintenance for the childless women of these⁵
Nor is tautology to be objected to the text⁶: "The share of re united
"brethren &c." on the ground that the previous passage⁷ i.e. "Among

1 Ob XVII 66 2 Ob XIII 26 3 of Nārada Ob XIII 24.

4 i.e. the text of Nārada, in Ob XIII 26 5 i.e. of the re united co-parceners

6 of Nārada Ob XIII 24 see note below. The two passages are not
tautologous, because, while the first declares that the *Strīdhāna* property of
women should be exempted from partition, the second lays down a clearly separate
rule whereby provision for the maintenance of the women of such a member is
made. There would therefore be no fault of tautology (see Halambhaṭṭi p. 194
l. 10 and Snobdhui p. 94 ll 12 and 13.)

7 Nārada XIII 25. The full texts are as follows —

"सद्यःकालं तु यो भगवतोमेव उ इत्यने 24

"आवृणाममया श्रेया कश्चिदेवमेवेत्यु या । विनयेत् धर्मं तस्य शेषस्तु दीयन् विना ॥ 25

"नया कालं कुर्वीत स्त्रीणां जीवनमयात् । तस्मिन् शर्मा मनुष्येद्विदुर्गुणिनात् च ॥ 26

Tr. "That portion which belonged to re-united coparceners is declared to be
absolutely theirs." 24

"If among several brothers one should die childless, or become a religious
ascetic, the others shall divide his property, excepting the *Strīdhāna* " (25)

"They shall make provision for his women till they die, in case they remain
faithful to the bed of their husband. Should the women not (remain chaste) they
must cut off that allowance" 26. [Sacred Books of the East Vol XXXIII Pages
193-195.]

See *Pamāṇya* vs *Pappuvagyanagar* 4 Mañ at pp. 31 and 32, and *Subramanya*
Pandya vs *Swa Subramanya Pillai* 17 Mañ at pp. 326-327 where, referring to
(Contd. on next page)

"brothers, if any one die without issue &c." (already) had a reference to re-united members. For, by this explanation of what had been said before, women's separate property is exempted from partition, and a mere maintenance for their widows is at the same time ordained. (21) As for the passage: "And the childless wives of these &c.", that will be explained (further on) as having a reference to the wife of an im-
5
potent man and such others

(22) As for the argument, that the wealth of a regenerate man is designed for a sacrifice³ and women not being competent to the performance of a sacrifice, their succession to the property is unfit, that
10
is wrong. For if every thing which is wealth be intended for sacrificial purposes, then charitable purposes, burnt offerings, and similar matters, must remain unaccomplished. Or again, if it be alleged that since sacrifice here signifies religious⁴ duty in general, and

(Contd from last page)

this and other passages the court deduces the right of survivorship by which under the Mitākṣharā the surviving members of a joint family become entitled to an estate which would have become the absolute property of the deceased member, had a partition been made during his life time

It may be noted that the *Dāyadhāra* does not interpret the term "woman" used in this passage as indicating a wife but women actually espoused, but not having the rank of a wife, see *Dayadhāra* Ch. XI, sect 1 § 48 also 4 *Mad* at p 32. A distinction among wives by marriage e.g. *सहिषी*, *भोगिनी* &c. will be found to have been referred to in *Ramasami vs Sundaralingasami* 17 *Mad* 422 at p 437 and *Brundavana vs Radhamani* 12 *Mad* 72

1 : e of the male members of the family 2 Yājñavalkya II 142

3 Colebrooke translates "for religious uses", but the word in the original is (यज्ञ) *Yajña*, and in the discussion which immediately follows in the *Mitākṣharā* the author has used this word in contradistinction from religious purposes generally

4 : e, the word sacrifice includes by implication all religious purposes in general, यज्ञ is that which implies something which has not been actually expressed, implication of something in addition, or any similar object where only one is mentioned "यज्ञविषयस्ते सति स्वेतमणिपदवत्तम्"

The three words (यज्ञ, दान and होम) *Yajña* or *Yāga* (sacrifice), *Dāna* (donation), and *Homa* (burnt offering) are explained in (*Subodhini* p 64) thus—The relinquishment of a thing in favour of a duty is a *Yāga* or consecration, the same object terminating with an offering in the fire is a *Homa*. *Bīlabhāṭṭa* adds a further technical distinction—when the offering is with the accompaniment of यज्ञ it is *Yāga*, without it, it is a simple *Homa*. And a *Dāna* or 'donation', or gift, is that by which the proprietary right is created in another by terminating one's own right of property in the thing transferred.

charitable donations burnt offerings and the rest are acts of religious duty, the applicableness of wealth to those uses is uncontradicted, thus then the other¹ two objects of life viz. *Artha* and *Kāma* which (also) are to be secured by wealth would remain unaccomplished, and in that case there would be an inconsistency in the following passages of Yajñavalkya, Gautama and Manu viz., "One² should not neglect religious duty, wealth or pleasure (such as he can accomplish) according to his capacity," so³ 'To the utmost of his power, a man should not let morning noon or evening be fruitless in respect of religious merit, wealth and pleasure' and also⁴ 'These (i.e. the organs⁵ of perception) cannot effectually be so restrained by 'abstinence'⁶ (23) Moreover if wealth be designed for sacrifices (only) the argument would be reversed, by which it is shown, that the

1 The four objects or purposes of a man's life (चतुर्विधं *Puruṣārthas*) in this world are (1) *Dharma* (धर्म) religious merit, (2) *Artha* (अर्थ) attainment of riches or worldly prosperity (3) *Kāma* (काम) desire for sensual enjoyment, and (4) *Mokṣha* (मोक्ष) final emancipation or deliverance of the soul from recurring births.

These are the four objects which a man has to accomplish during his life in this world. And the objector says that if all the wealth were appropriated towards *Dharma* only, the other two viz. *Artha* and *Kāma* would remain unaccomplished, and thus there would be a breach of the supreme duty of attaining all the four objects of life.

2 Yajñavalkya Acarādhyaya 115 p. 310 above. The passage in the text of Yajñavalkya reads differently from the quotation here given by Vyāṣṇesvara viz. यत्नमप्युपैत यदेव शक्तिम् Tr. 'should not neglect religious duty &c. in their proper season.' This is made further clear in the passage of Gautama next cited, which when freely translated would read thus: 'Let him not pass idly (any part of the day but) morning midday or evening, (but) according to his ability (he shall make each useful) by the acquisition of spiritual merit or of wealth and by taking his pleasure.' And generally the mornings are prescribed for the first and the last i.e. (*Dharma* & *Mokṣha*), the midday for the *Artha* and evenings for the *Kāma*.

3 Gautama Ch. IX 40

4 Manu Ch. II 96

5 The 5 organs are enumerated in Verses 89, 90 92 of Ch. II by Manu. In Verse 91 ten of these are classified into two groups viz. 'Organs of sense' (इन्द्रियेभ्यः) 'and organs of action' (क्रियेभ्यः) and verse 92 declares mind as 'the eleventh organ which by its quality belongs to both kinds.' The meaning is, that these organs cannot be so effectually restrained by a course of abstinence as they would be by a sense of satiety generated by enjoying them.

6 Non-use (अप्राप्य) See note above.

careful preservation of gold under the text¹ : "Let gold be 'preserved' " is intended not for religious ends but for human purposes (24) Moreover, if the word sacrifice import religious duty in² general the succession of women to estates is most proper since they also are competent to the performance of auspicious³ and conservatory acts (25) As for the last text which declares the dependence of women "A woman does not⁴ deserve independence," let there be dependence, but where is the objection for the acceptance of property?

(26) How then are the texts such as⁵ "Wealth was produced

The Answer 'for the sake of (the performance of) solemn sacrifices' and others to be interpreted? The

answer is that that text is to be interpreted to mean that wealth which was obtained⁶ for the (express) purpose of (performing) a sacrifice must be appropriated exclusively to that purpose even by sons and other successors, as it has been declared to be an offence even in the case of sons and other successors, generally⁷ in the text⁸ 'He, who 'having received articles for a sacrifice, disposes not of them (for 'that purpose) shall become a kite or a crow'

1 This is from the 12th *Toṣṭi* (*Adhikaraṇa*) of the 4th Section (*Paṭa*) of the 3rd Chapter (*Adhāyaga*) of Jaimini. The passage in full from the *Ve* is as follows — दृष्ट्वा यद्गन्तव्यं तदा तदा शिवं शिवं । तदा तदा शिवं । *Tait. Br.* II 11 4 6. This passage enjoins the careful preservation of gold lest it lose its brightness and be tarnished. The question raised on it is whether the observation of the precept be essential to the efficacy of sacrifice or serve only a human purpose and the result of the reasoning is that the precept refers to the person and not to a sacrifice. *Paṇ* *śāstra* says that this demonstrated conclusion or *Siddhānta* (सिद्धांत) will be contradicted if it were assumed that gold is intended only for a sacrifice (see *Subodhani* p. 63 66 *Tr.* 1 169-163 and *Brahmabhaṭṭa* p. 193 *Anantasharma* No. 24 p. 161).

2 See note above p. 1077 n. 4

3 दृष्ट्वा &c. see note on p. 1014 n. 4 above.

4 शिवं &c. is not fit to be independent. See *Antyāśa* vs *Jarher* 1 *Bom* 121 at pp. 123 and 124 as regards the capacity of a woman to hold property and to enter into a contract without the husband's consent or ratification. But it would be otherwise if the property be immovable or be a property producing a periodical income. See *Jau* vs *Jaghu* 103 30 *Bom* 220 at pages 231-240.

5 See above p. 1073 II 1-3

6 Acquired &c. in charity &c. by donation &c. see *Brahmabhaṭṭa* p. 196 II 5-7 *Subodhani* p. 90 II 6-8

7 &c. without particularisation (सर्वत्र)

8 See *Manu* Ch. II 20

- (27) Even as to what has been said by Kātyāyana "Heirless property goes to the king, deducting however a subsistence for the females as well as for the funeral charges; but the goods belonging to a venerable priest¹ let him bestow on venerable priests," i. e. heirless property or wealth which is without an heir to succeed 'goes to the king' i. e. becomes the property of the sovereign 'deducting, however, a subsistence for the females as well as for the funeral charges'; it means that after excluding or setting apart a sufficiency for the food and raiment of the women, and as much as may be requisite for the funeral charges such as the funeral repasts and other obsequies in honour of the (deceased) owner, the residue goes to the king. Such is the construction of the text. An exception is added: "but the goods belonging to a 'venerable priest,' deducting, however, a subsistence for the females as well as the charges of obsequies, 'Let him bestow on a venerable priest.'" (28) But even this relates to women² kept in concubinage, for the term employed is 'females'.³ The text⁴ of Nārada likewise relates to women of the harem since the word used is women⁵ "Except⁶ the wealth of a Brāhmaṇa, but a king, who is attentive to the obligations of law⁷ should allot a maintenance to the women of such a person. Thus has been declared the law of inheritance" (29) But since the term *patni* is here⁸ employed, the succession of a wedded

1 A *Śrotriya* is a learned Brāhmaṇa. "One is a Brāhmaṇa merely by birth, he is called a *śrotriya* after the performance of rites, he becomes a *tyāga* by learning, and is designated a *Śrotriya* when he has all the three."

"अमना नाशो ज्ञेयः सारगैर्द्रव्यं दत्तयेत् । विद्यते यति विद्वत् विद्वि श्रोत्रिर्दत्तयेत् ॥"

It is such a one whose wealth has been unanimously declared to be unfit to be taken by the king.

Balambhatta reads as *Śrotriyaśloka* *pāda* *śloka* : "should devote it for the use of" a *Śrotriya* Brahmana.

2 अवस्थापितवत् See further on Yājñ II 290 and the *Mitākṣharā* thereon.

3 The word is *śeṣa* which is derived from *सु* 'to serve'.

4 Ch. XIII 62

5 The word is *स्त्री*. It is derived as *स्त्रियति* *गमयिष्यम्*. The text of Nārada refers to women generally.

6 The last portion of verse 54 is (In default of all, that (wealth) goes to the king" and V 5a begins with the exception to this last clause.

7 यत्तत्तत्तत्तत् — i. e. intent on following the dictates of *Dharma*.

8 Here i. e. in Yājñ II 13a see pp 1063 I 9 above.

wife, who is chaste is not inconsistent with those passages (30) Therefore it is established as the right interpretation (of this passage), that when a man who was separated (from his co heirs) and not re united (with them) dies leaving no male issue, his wife takes the estate in the first instance For¹ partition has been discussed,² and re union is to be subsequently considered

(31) It must be understood that the explanation proposed by Śrīkara and others restricting (the widow's succession) to a small portion of property is refuted by this³ For even where there are legitimate sons it is provided whether the partition be made in the owner's lifetime or after his decease, that the wife shall take a share equal to the sons "If⁴ he make the allotments equal, his wives must be made partakers of "equal portions"⁵ And again "Of heirs dividing after (the death of) the father, let the mother also take an equal share" Such being the case it is a mere error to say that the wife takes nothing but a subsistence from the wealth of her husband who died leaving no male issue⁶

(32) But if it is argued that under the terms of the texts (above cited) "his wives must be made partakers of equal portions" and "Let⁴ the mother also take an "equal share," a woman takes only as much wealth as is sufficient for her maintenance, that is wrong For the words *anua* 'share or portion', and *sama* 'equal', would thereby be deemed meaningless

(33) Or again it may be argued that if the wealth be great, she takes precisely enough for her subsistence, but if small she takes a share equal to that of a son that too would be wrong, for variable-

¹ What the author means is this that the widow succeeds to all description of property, except those which form the subject of partition in verses 114-120 above and also those which form the subject of re-union in verses 130 & 139 Javeda Kesi vs Shree Prasad Singh 17 Cal 33 at p 36

² From Verse 114 to 127 above

³ i. e. by the argument which follows—See Bajambhatti p 197, l 15 and Sabodhini p 66 ll 25 etc

⁴ Yājñ II. 116, p 997, ll 14 16 ⁵ Yājñ II 123, p 1027, ll 11 12

⁶ For a lucid explanation of this passage see Sabodhini p 66 lines 23 to 32 and p 67, ll 1 3 and Bajambhatti p 197

ness¹ in the precept will be the consequence. Since if the estate be considerable the texts (above cited) viz. "his wives must be made partakers 'of equal portions'" and "let the mother also take an equal share", would be construed, regard being had to another text² also which lays down
 5 a bare maintenance, to suggest a share adopted for a bare support. But if the estate be inconsiderable, the same passage would (have to be construed to) indicate the assignment of a share equal to a son's

(34) Thus, in the instance of the *Chāturmāsya*³ sacrifices, in the

An objection

disquisition (of the *Mīmāṃsā*) on the passage
Dvayoh pranayanti, where it is maintained by
 the opponent that the rules for the preparation of the sacrificial fire
 at the *Soma-Yuga* extend⁴ to these sacrifices, and as a consequence of
 it the injunction "not to construct a Northern Altar (*Uttara Vēdi*)
 'at the *Vasvadeva* sacrifice nor at the *Sūnasriya* sacrifice, must be
 15 "understood as a prohibition of such altar⁵, but it is answered by an
 advocate⁶ of the right opinion that it is not a prohibition⁷ of that

The answer

'altar at the first and the last parts as suggested
 "by extending to these sacrifices the rules for
 'preparing the sacrificial fire at the *Soma-yuga*, but an exception to

1 It is a rule that "a single sentence once uttered carries only one meaning. सद्बुद्धिर्न शब्दं बहुविधवचनमयति, and if the texts cited above were to be interpreted to have one meaning in case where the estate is large, and quite another meaning where the estate is small, that would be contrary to the universal rule of interpretation stated above i.e. it would lead to the शब्दभेद दोष (See Subodhini p. 97 ll. 5-10 Balamhasti p. 197 ll. 26-30)

2 Viz. Narada Ch. XIV. 26 "And should provide for the maintenance of his women till their death" (See p. 236 l. 21 above) यत्नं चायं कुर्वीत स्त्रीणां जीवनसमाप्त्यं (Subodhini p. 67 l. 9 Balamhasti p. 197 l. 29)

3 *Chāturmāsya* is the name of the sacrifice performed every four months at the beginning of *Kārtika*, *Fālguna*, and *Āshādhā*. It consists of four parts in order viz. (1) The *Vasvadeva*, (2) the *Varuna-Praghāsa*, (3) the *Sākamedha*, and (4) the *Sūnasriya*.

4 An *Atidesa* (अतिदेश) is an extended application, or an application by analogy. See note 4 on page 1077 above. The argument here is that the general practice prevailing at the *Soma-yuga* may, by analogy, be applied here.

5 i.e., the Northern altar.

6 Mark the expression. It is the position of the follower or apologist of the right opinion, and not the right opinion itself, which is given at the end of the discussion.

7 *Pratishedha*—a prohibition, a cutting down, delimitation.

'the express rule 'prepare an *Uttara-vedi* at this sacrifice', bringing in the construction of the *Uttara-vedi*, it is urged in reply by the opponent, that (even then) variableness in the precept must follow,

An objection again since the same precept thus authorizes the occasional construction of the altar, with reference to a prohibition of it, at the first and last of the (four) periods of sacrifice, and commands a construction of it at the two middle periods independently¹ of any other maxim. But it is finally shown as the

Final conclusion right doctrine, for the purpose of obviating² the objection of 'variableness in the precept,' that the prohibition of the northern altar at the first and last of the periods of sacrifice is a *Nityānuvāda* and that regarding the injunction *Dvayoh³ pranayanā* as an *Arthavāda*⁴, the injunction "prepare the *Uttara-vedi*

1. i. e. without reference to any particular maxim, but quite by a reasoning on general principles

2. Mark the word *Mayāt*—apprehension. It is such niceties very critically conceived and expressed which demonstrate the high position of *Yājñavalkya*. Even the remote apprehension of a variableness in the precept is to be avoided, and for this, any other minor blemish may be accepted.

3. अत्रात्र an explanatory repetition of, or reference to, what is already mentioned, a supplementary repetition as distinguished from an injunction or *Vidhi*

अत्रात्र is a declaratory assertion, whose purport is either praise or blame (अशक्यमिदमत्रात्र अत्रात्र) *Arthavāda* passages are of two kinds, being either complements of *Vidhi* passages, or complements of *Nishidhi* passages. It is again of three kinds i. e. *Gunavāda*, *Anuvāda* and *Dhātārthavāda*

विधिरेवमात्रं स्वादुवचोऽवधारितं । पुनर्वचस्तद्व्याख्यादर्थवदत्र ॥

4. The above discussion is based on what is known as the "*Dvayoh pranayanā*" Maxim of the *Mīmāṃsā*. For a lucid exposition of the passage in the text of the Maxim and its bearing on the text, see Subodhini, pp. 67-68 and *Bālabhāṣya*, which, as usual, elaborates the points in the *Subodhini*. The following, in short is the summary of the discussion

General remarks. The two sacrifices referred to in this discussion are the *Soma yāga* and the *Chāturmāsya*. The *Chāturmāsya* sacrifice has been explained in note 3 on page 1082 above. The principal sacrifices are the *Soma*, the *Darsa-Pūrnāmāsa* and the *Agnihotra*, these are known as the *Prakṛtis* (प्रकृति), or Principal Sacrifices. The *Chāturmāsya* is a 'special sacrifice' and falls under the *Darsa-Pūrnāmāsa*. Such a one is called a *Vikṛti* (विकृति), or 'a special rite'

Pranayanam is the carrying of the fire from the *Gārhapatya* altar to the *Āhavanīya*

(Continued on next page)

"at this sacrifice" Commands the construction of the northern altar at the two middle periods only viz the *Varunapraghāsa* and *Sākamedha*

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Lastly, the construction of the 'Northern altar' has been ordained in the *Soma* Sacrifice only, and not in the *Darsa Pāṇamāsa* sacrifice

These are some of the general rules of practice ordained at the sacrifices

Then there are the following texts of the *Veda*, in reference to the *Chāturmāsya* sacrifice, viz,

(1) उपान यन्ति 'Upa atre tapanti,' Tr 'In this (i.e. the *Chāturmāsya* sacrifice) the Northern altar is to be established "

(2) न वैश्वदेवे उत्तरदिक्प्रकान्ति न अगस्त्ये—'Na Vaitśvadeve uttaravedīprakānti-
ranti na Sunāśirya' Tr 'The Northern Altar is not to be established
either in the *Vaitśvadeva*, or in the *Sunāśirya* portion

(3) उग्र वा णौ यज्ञस्य यद्गृह्ययास आग्नेयेति द्वौ ऋषयौ—'Ugrā vā ṇau Yagnasya
yat Varuna Praghāsaḥ Sākamedhascheti Dvayoh Praṇaynau "

Tr 'The two legs (i.e. mainstay) of the *yajña* are the *Varuna
Praghāsa* and the *Sākamedha*, the two *ṛṣi* have fire kindled in them

Taking these texts and having regard to the general rules of sacrifice according to which the *Pranayana* in the case of the *Soma* alone has been laid down in the *Śruti*, while there is no provision for the same in the case of the *Darsa Pāṇamāsa*, the objector or *Parva Pūjaka* says that the procedure to be adopted for a *Pranayana* should be that prescribed for the *Soma* inasmuch as it is *समन्त* and not the *अग्रमन्त* one in the case of the *द्वयार्पणस्य*

Of the three texts quoted above, No. 1 lays down that the 'Northern Altar' which is invariably connected with fire kindling, should be consecrated in the *Chāturmāsya* *Yāga*. This is in the nature of a *general* rule or *Vidhi* which has been cut down by No. 2, according to which the 'Northern Altar' is not to be consecrated either at the first or the fourth quarter of the *Chāturmāsya* sacrifice, viz in *Vaitśvadeva* and *Sunāśirya*

No. 3, has some praise for the 2nd and 3rd quarters viz *Varuna Praghāsa* and *Sākamedha*, and then it says that the fire kindling should take place in the two (i.e. these two). Shortly stated the position is this

(1) The Northern Altar should be established

(2) Not not in the case of the first or the fourth quarters

(3) In the 2nd and 3rd quarters fire should be kindled.

These rules have been construed to yield the following plain result. The first is a 'general rule' or a *Sūtrānta* *Vidhi*. The second is an exception to it and the third is a necessary deduction following as the combined result of Nos. (1) and (2). Further, the third is in the nature of an *Atithatā* showing the reason why the second and the third are not subjected to any exception in respect of fire kindling.

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(35) Again as to the doctrine, that from the text of Manu¹ "the father shall take the inheritance or the brothers." "Of him who leaves no male issue," as well as from that of Śaṅkha "The wealth of a man, who departs for heaven, leaving no male issue, goes to his brothers; in their absence his parents shall take, or his eldest wife." The rule is deduced that the wealth of a man leaving no male issue goes to his brothers; and from the text²: "Let them provide for the support of his women for life," it also becomes established that the wife obtains (as much) wealth (as is) sufficient for her maintenance. This being so (it follows that) if a rich man die leaving no male issue,

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The above construction harmonises the three texts and does not introduce any conflict such as would result in an *option*.

But the opponents argue thus. We concede that the first is a general rule or *Vidhi*, and the second is a 'special negative *Vidhi*' by way of an exception. But the exception is as regards the 'Northern Altar,' and not as to the kindling of fire which may be kindled under the general procedure laid down in the *Soma* sacrifice, and thus they further contend that the clause *Dwayoh Pranyasta* in No 3 is to be construed as being intended to apply also to the first and the fourth quarters of the sacrifice by the *Vaisadeva* and the *Sundāriya*.

In short, what they maintain is that all that No 2 lays down is that the 'Northern Altar' should not be established in the case of the *Vaisadeva* and the *Sundāriya* quarters. This does not prohibit the kindling of the fire, which has been presented quite generally in No 3. Thus they say, here there is a virtual conflict between the text, and thus there is scope for the rule of *option* (*Vaidika*) to prevail, and taking advantage of this, they contend that the northern altar should be constructed in the *Vaisadeva* and the *Sundāriya* quarters.

To this the *Nāddhāntins* or the upholders of the correct opinion, reply that this method of argument involves the fault of "variableness in the precept" (*Vidhi Vairāmya*), and cannot therefore be allowed. For, the opponents, once construe No 1 as a "general rule of *Vidhi*" with No 2 as an exception. They construe it again as a 'general rule' and by side No 2 which they now construe as an absolute rule creating contradiction. They get the fire by the first view and altar by the second which is faulty and cannot therefore be allowed.

As stated at the beginning of this note the reader will find a very lucid exposition of this in the short but clear statement in the *Subodhā* pp 67-69 Tr pp 168-174.

According to this maxim, it would be wrong to construe a rule in one way in one place, and in quite another way in another place.

- the wife takes as much as is adequate for her subsistence, and the rest the brothers take, but (that) if the estate be barely enough for the support of the widow, or less than that then to provide (for the case of) a conflict (which might arise) viz whether the wife alone should take or the brothers also, the text¹ "the wife, the daughters &c" has been propounded to demonstrate the potentiality of the (claim of the) first (claimant). This opinion too the Reverend Teacher² does not tolerate. For he interprets the text³ 'Of "him who leaves no male issue the father shall take the inheritance, or his brothers" as laying down an option and not as laying down an order (of succession) but only as indicating the right (of persons) in the matter of inheritance, and that that text becomes applicable when the group of heirs such as the wife and the rest fail, and also that the text of Śankha relates to reunited brothers
- (36) Moreover, it does not appear either from this text or from the context that it is relative to an inconsiderable estate. If (the concluding portion of the text is) on failure of the first among these "the next in order is heir" be restricted to the case of a small property,⁴ by reference to another passage in two instances (viz of) the widow and the daughters,⁵ but (be understood to) relate to wealth generally in the case of 'the father and the rest' the consequent defect of the variableness in the precept referred to above affects this interpretation. So this is⁶ a mere trifle. (37) As for the text of Harita "If a woman become a widow in her youth, be ill behaved,⁷ maintenance must in that case be given to her for the support⁸ of life that too is intended for a denial of the right of

1 Of Iyā II 135 see p 106a

2 i. e. Visvarupacharya (Subodhini & Bajambhatj)

3 Of Manu Ch IX 185

4 On page 941 v for वास्तव्यमिदं वाच्यमिति वाच्यं read विषयम्

5 i. e. They should provide for their maintenance &c. Nirada Ch I XIII "C See n above 236 and p 21

6 This वस्तिविहितं does not appear in the translation by Mr Colebrooke

7 वाच्यं Anvaya Col brooke translates 'Lead strong' Mr Mandlik translates as "If a woman becoming a widow in her youth come to be suspected of unchastity &c (p 59 II 9 10) Bajambhatja renders it as 'unrueful'. The dictionaries translate the word as ill-conducted, unchaste, unfaithful when used in

widow suspected of incontinency, to take the whole estate; (moreover) from this very passage¹ it is apparent that a widow, not suspected of mis conduct has a right to take the whole property (38) And with this same view, it has been said by Śāṅkha¹ "Or his senior wife."

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Being senior : i.e. senior or superior in qualities, and unsuspected of incontinency, she takes the whole wealth ; and like a mother, maintains any other (wife of her husband who is) ill conducted This all is unexceptionable

5

(39) Therefore it has been established that a wedded wife takes the whole estate of a man, who, being separated (from his co heirs) and not subsequently re-united (with them) dies leaving no male issue.

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reference to a woman This sense is also to be found in the following couplet—
from the lexicon *Vīra* (विरा) cited in the *Rāmāyaṇa* on *Amarasīma* (III 3 217)

“ कर्कश इत्येव ह्यपि विरुपे दृष्टे । इत्येव साहित्यिक वाक्यवद्व्यभिचारेण ”

It is derived from the two words कर् (कर्हि वाक्) and कश् (कश्चिद्) कश्चिद् वाक् कश्चिद् “ He who is aggressive as well as harsh The translation given above would thus be appropriate *Pūrāṇācārya* : explanation of this term is शङ्कित-व्यभिचार “ Suspected of incontinency ” and not ‘ incontinent ’ The suspicion being caused by her general behaviour and manners

In *Savitribas vs Laxmibai* 2 Bom at p 606 Westropp O J while considering this text, doubted whether this text applied to maintenance See also *Vahs vs Ganga* 7 Bom at p 88

1 अयं संपत्तिम्—There is a special meaning in the expression संपत्तिम्—संपत्ति (*śampatti*) is derived from the word क्षि (to waste) Mark the expression which indicates that the allowance is to be given to her not so much for the support of life with a view to its extension or prolongation but it is to be given till the life wears away The meaning is Let her have a subsistence till the sinful life wastes away ”

प्रतिष्ठा enriched, अप्रतिष्ठा unprovided These expressions must be construed in the sense of ‘ indigent ’, as opposed to ‘ possessed of means ’ irrespective of the sources of provision or non provision See *Manki Kewhar vs Kandan K* 47 All 403 following 23 Bom 220 and the cases in 2 All 601 and 4 All 243

2 “ & from this it is clear that the rule that a chaste wife takes the whole inheritance is also approved of by this writer ” *Balamthattu* p 290 l 21

See *Vinayaktes vs Laxmibai* 1 Bom H O Rep (O O J) 117 at p 122

[Colebrooke Sect II]

[Right of the Daughters and Daughter's Sons]

(1) (On failure of her, the daughters (inherit)) (The plural is

The daughter

used in "the daughters" to suggest the equal or unequal participation of daughters alike or dis-

similar by class) (2) Thus Kātyāyana says "A wife takes the estate of her husband i.e. such a one as does not lead an incontinent life, and in default of her the daughter, if she be unmarried then" And also Brihaspati "The wife is pronounced (to be) the successor to the wealth of her husband, and, in her default, the daughter As a son, so does the daughter of a man proceed from his several limbs How then should any other person take her father's wealth?"

(3) Here, however, (if there be a competition between a married and an unmarried daughter, the unmarried one takes the succession) under the specific provisions of the text above cited, viz. "In default of her, the daughter (takes) if she be unmarried then" (4) Moreover, (if the competition be between an enriched and unprovided daughter, the unprovided inherits, and on failure of such, the enriched one succeeds) For the text of Gautama is "A woman's *stridhana* goes to her daughters, unmarried or unprovided" is equally applicable in the case of the father's estate (5) (Nor, must it be supposed that this relates to the appointed daughter for intreating of the male issue,

1 According to the Mitāksharā the right of a daughter is based on consanguinity and not religious merit as is the case under the *Dāya Bhāga* under which no daughter could inherit unless she was capable of bearing male issue who would then offer funeral oblations to the maternal grandfather, so that widowed daughters having no male issue or daughters who have an incapacity for bringing any but daughters into the world are excluded under the *Dāya Bhāga* (See Ch. VI 21) *Pramila Devi vs Chandra Sekhar* 43 All 450 in this respect the Smṛti Chandrika in giving the reason of this rule appears to adopt the same line of reasoning (See Ch. VI sect II p 12) But the Madras High Court held this to be a merely moral precept and has followed the Bombay ruling in *Adayappa vs Sudrasa* 4 Bom 104 at p 111 in *Sammut Ammal vs Vuttammal* 3 Mad 265 at p 269 See also *Vedammal vs Vellammal* 31 Mad 100 at p 108, and also *Janakjeevar vs Jannabai* 1 Bom. H C Rep (O O J) at p 12.

Daughter's daughter's son is preferable to the sister's son *Kalmitthan Pillai vs Arumamuthi* 8 Mad 238

an appointed daughter and her son have been pronounced equal to an *dhruva* son (by the text) "Equal to him is the *putrikā-sutah*"

(6) By the import of the particle *cha*, "also", on failure of daughters the daughter's son succeeds to the estate.) Thus
The daughter's sons *Viṣṇu* says. "If a man leave neither son, nor 5
"son's son, nor issue, the daughter's sons shall
"take his wealth For, in regard to the (right to the) performance of
"obsequies of ancestors, the daughter's sons are considered as son's
"sons" *Mam* likewise declares, "By that male child, whom a
"daughter, whether not appointed or appointed, shall produce from 10

1 Yajñ II, 128, see page 1045 l 9

2 Referring to this passage, and to *Dāya-Bhāṣa* Ch XI sec II pp 18-20, the Madras High Court remarks in *Karuppi Natchi vs Sankar Narayana Chetty*, 27 Mad 300 at p 311 —

"The difference in his (i.e. daughter's son's) position under the old law "and the present law is that under the former if he is the son of an appointed daughter (and only one such daughter can be appointed) he becomes by a fiction "of law the son or son's son of the maternal grandfather, and as such, a member of "the grandfather's family, and is not a member of his own father's family" (see note 3 on p 1046 above) "Under the present law he is a member of his own father's "family, but he is regarded as being also as good as a son's son to his maternal "grandfather", see also the observations of the Court in *Jamjatrani vs Bai Jamna*, 2 Bom II O R (A C J) 11, at p 14 sqq as to whether a daughter's interest during the lifetime of a widow is a vested one or a merely contingent estate See also *Vidharas vs Ramras* 24 Bom 317 = 2 Bom L R at p 18 and *Muthusadar-ganatha Tetar vs Periasami*, 16 Mad II, at p 16 to 17

3 Ch IX 136

4 Here the claim of the daughter's son to the estate of the maternal grandfather has been demonstrated. Balambhatta argues a claim for the daughter's daughter on the analogy between succession to the *stridhāna* and inheritance of the paternal estate (See Balambhatta p 207 H 10-29 & p 223 l 26)

There is no support in *Yājñavalkya-Smṛiti* for the right of the daughter's daughters as heirs coming immediately after the daughter's sons. Nor is there any direct authority in the *Mitākshara*. But Balambhatta refers to the special text of *Yājñavalkya* (II 145) on the succession to *Stridhāna* and to the text of *Nārada* viz "The daughters take the residue of the property of the mother," and maintains that on the same grounds the inclusion of the daughter along with the daughter's son in the particle *cha* 'and', in the line of succession is proper. "And," adds the author of Balambhatta: "this is proper also, as in the case of a "succession to *stridhāna*, the order is daughter daughter's son, grandson &c, so

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[Colebrooke Sect. II]

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(1) (On failure of her, the daughters (inherit).) (The plural is

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(3) Here, however, (if there be a competition between a married and an unmarried daughter, the unmarried one takes the succession) under the specific provisions of the text above cited, viz: "In default of her, the daughter (takes) if she be unmarried then" (4) Moreover, (if the competition be between an enriched and unprovided daughter, the unprovided inherits; and on failure of such, the enriched one succeeds.) For the text of Gautama³ viz: "A woman's *strīdhana* goes to her daughters, unmarried or unprovided" is equally applicable in the case of the father's estate (5) (Nor, must it be supposed that this relates to the appointed daughter for, in treating of the male issue,

1 According to the Mīṭākṣharā, the right of a daughter is based on consanguinity and not religious merit, as is the case under the Dāya Bhāga, under which no daughter could inherit unless she was capable of bearing male issue, who would then offer funeral oblations to the maternal grandfather; so that widowed daughters having no male issue, or daughters who have an incapacity for bringing any but daughters into the world, are excluded under the Dāya-Bhāga (See Ch. XL 21) *Pravara Desai vs Chandra Sekhar* 43 All 150 in this respect the Smṛti Chandrikā in giving the reason of this rule appears to adopt the same line of reasoning (See Ch. XI sect. II p. 12) But the Madras High Court held this to be a merely moral precept and has followed the Bombay ruling in *Adayappa vs Andrasa* 4 Bom 104 at p. 111, in *Simman Ammal vs Muttammal* 3 Mad 265 at p. 269. See also *Vedammal vs Velanayaga* 31 Mad. 100 at p. 108, and also *Vinayakkar vs Jussimol* 1 Bom II O Rep (O O J) at p. 125.

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(6) By the import of the particle *cha*, "also", on failure of daughters the daughter's son succeeds to the estate. Thus
The daughter's son: Vishnu² says "If a man leave neither son nor son's son, nor issue, the daughter's sons shall take his wealth. For, in regard to the (right to the) performance of obsequies of ancestors, the daughter's sons are considered as son's sons" Manu³ likewise declares, "By that male child, whom a daughter, whether not appointed or appointed, shall produce from

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"(a husband of) an equal class, the maternal grand-father becomes
"the grandsire of a son's son; he shall offer the funeral cake and
"take the estate."

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[Colebrooke Sect. III]

[Right of Parents]

(1) On failure of these (heirs) the two parents i.e. the mother and
the father are successors to the property.

(2) Although¹ the order, in which parents succeed to the estate, do

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"in the case of a succession to the father's estate, the son, grandson, his son,
"widow, daughter, daughter's son, daughter's daughter &c would be the order
"inferable by analogy, having regard to (the doctrine of) propinquity *Vijñānesvara*
"also having referred to the text of Gautama (Ch. XXVIII s 22), viz "a woman's
"stridhana goes to her daughters whether married or unmarried" as being
"equally applicable in the case of the father's estate, this right of the daughter's
"daughters to succeed is also approved by him. Otherwise, the daughter's
"daughters having been referred to first (i.e. in the succession to the mother's
"property) and there being no reference to them, nor their inclusion here, it
"would come to their entire exclusion as heirs at all." And so Bālabhāṭṭa
maintains that the daughter's daughter is also an heir immediately after the
daughter's son. And this is proper

West and Bühler in their *Hindu Law* [third Edition p. 130 (c)] have a note
on this subject. It does not refer to this line of reasoning of Bālabhāṭṭa, and is
unconvincing as a ground for excluding daughter's daughter. Further on, at
p. 477, a precedent from *Thana* has been quoted, in which the answer simply
states in general terms that the second cousin and the grand-daughter are
not heirs.

The exclusion of this class of heirs i.e. daughter's daughter from their proper
place in the order of succession would thus appear to be not based on sound
reasons. Act II of 1929 has now definitely placed her in the line of heirs.

1 Mark the following passage from the *Subodhini* which serves as a very
good introduction to the passage in the *Mitāksharā*. See *Subodhini* p. 70 II
31-33. Indeed, in the absence of the daughter or the daughter's son, the parent's
right of succession is laid down. However, as the term 'parents' *Pitṛau* is in
the *Plaspeṭa* unresidual-compound form i.e. retaining the one member of the
compound and omitting others, the question would arise whether the parents take
conjunctly or severally, and again whether the order of succession is optional or
regulated and fixed.

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not clearly¹ appear, since a 'conjunctive compound' is declared² to present the meaning of its several terms at once, and the *ekāśeṣha*³ is regarded as an exception to that, still as the word 'mother' stands first

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To this Viṣṇusvara gives an answer that of the two parents, mother and father, the mother has preference. His reasons may be summarised thus —

- (1) In dissolving the compound word *Pitaraṃ* the word *Mātā* comes first
- (2) Even when the *ekāśeṣha* compound is not used, and the ordinary *Dvandva* is used, as in *Mātāpitaraṃ*, the word *Mata* comes first
- (3) The text also gives the same order, whether the express or the implied sense is taken
- (4) In the case where a man has several wives and several sons by each wife, the propinquity between a particular son and his mother is greater than between him and the father. See Balam-bhatti. Subodhani attempts an explanation on the same lines as adopted by the Mitākṣharā

This is not quite clear. Viṣṇusvara says that because the father is a common parent of all, and the mother a particular parent, therefore she has greater propinquity, a reasoning which is not quite convincing. See note further on *Aśvabala* vs *Dadhīra*, 6 Dom 541 at p 541, the rule of propinquity alone having the final determining force the mother has preference. See *Asaśi* vs *Harisā* 23 Dom at p 307. *Lallubha*'s case 2 Dom at p 430

N B Mother does not include the step-mother. *Parā Nandī* vs *Suryam* 18 All at p 224

The propinquity here referred to is different from the propinquity elsewhere in the *Mitākṣharā*. See *Nāthala* vs *Jama* 24 Dom 317

1. From the text of Yājñavalkya II 135-136 above p 1065

2. According to the rule of *Pāṇini*, (II 2 29) the *Dvandva* compound is formed when two or more words occur with the import of the conjunctive 'and'. But it is not every combination of words joined together by the conjunctive particle *cha*, 'and' that goes to make up the *dvandva* compound. The conjunctive *cha* has the power to indicate four principal meanings, viz (1) Community of reference (समुच्चय), (2) Collateralness of reference (समीप), (3) reciprocation (परिस्पर्ध) and (4) Cancellation (वन्धन), and it is only in the last two of its meanings that the particle *cha* helps to make up a *dvandva* compound.

3. *एकशेष*—the unresidual is a species of the *dvandva* or conjunctive compound. Literally it means 'the one remains'. It is a compound in which one member is retained and all the others are omitted, the one member which is retained being expressive of all the ones that are omitted. *एकशेष* is used in the compound of *पितृ पितामह* which is compounded of two words thus

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- in the sentence¹ in which the compound is resolvable, and also (since) in the case where the *ekasesha* (compound) is not used, i.e. in the regular² compound expression (*mātṛpitarau*, i.e. mother and father), the word mother is stated first, it follows from the order of the
- 5 terms and that of the sense which is thence deduced, and according to the series thus presented in answer to an inquiry concerning the order of succession, that the mother takes the estate in the first instance, and, on failure of her, the father (3) Besides, the father is a common parent to the other sons also, but the mother is not so, and since her
- 10 propinquity is consequently greatest it is just that she should take the estate in the first instance conformably to the text³ "to him who" "is the nearest among the *sapindas*, the inheritance shall belong". (4) Nor is the claim in virtue of propinquity restricted to *sapindas*⁴

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Mātṛ cha pitṛ cha, only one word viz *pitar* is retained and it is expressive of the other which is dropped अग्रं अतः, are other instances. It may be noticed thus, that according to strict grammatical interpretation any plural form is an instance of *ekasesha*, e.g. पितृ पितृ &c. This *ekasesha* is optional and the regular form may be retained e.g. instead of *Pitarau* (*ekasesha*) it may be *Mātṛpitarau* (*dvandwa*). See Panini I 2-70

1 *Vigraha* is the dissolution of the compound and a *sighra vedhya* is the sentence in which the dissolution of the compound is brought out. The compound expressions *pitarau* as well as *Mātṛ pitarau* are both resolvable into the component elements in the same way: i.e. *Mātṛ cha pitṛ cha*—"Mother as well as the father".

2 See Panini II 2 34. This Sutra states the rule that a word form which has fewer vowels is placed first in a *dvandwa* compound and the *Hārtila* on this enumerates several cases in which certain word forms are placed first e.g. names of seasons and stars consisting of equal syllables, a word consisting of light vowels a word expressive of the more honourable of the two (अग्रं अतः) &c., are placed first and this last class is illustrated in the *Matkōbhāṣya* of *Patañjali* and in the *Āśīlā Vṛtti* of *Wāmana* by this very compound word viz *Mātṛpitarau*.

3 Of Manu Ch. IX 187. See *Babulal vs Nankulal*, 22 Cal 330 at p 340 *Chinnasami Pillai vs Kunyu Pillai*, 35 Mad 162 at p 168, 169.

4 *Sapinda*. See note (1) on p 1071 (*Supra*). Colebrooke translates *Kinsmen allied by funeral oblations* and *Samānoddāta* as "kindred connected by libations of water". See *Umair Bahadur vs Uday Chami* 6 Cal 119 at p 125 (I B) as regards the meaning of the terms *sapinda* see pages 124 to 127 where the Court observes at p 127 "These considerations leave no room for doubt that the author of the *Mitākṣharā* has used the word *sapinda* here not in the sense of 'connection by funeral oblations' but of connection by particles of one body as defined in the *Āchārakāṇḍa* (Verse 52 &c.)". See also *Lakshmanammal vs Tiruvengada* 6 Mad 241 at p 245.

only but on the contrary, it appears from this very text, that the rule of propinquity alone is effectual, since even in the case of the *samānodakas* and other relations, a claim to inheritance arises without any exception (5) Therefore, since, of the two parents (the mother and the father), the mother alone is the nearest in propinquity, it is more proper that she should take the estate. But on failure of her, the father is successor to the property²

[Colebrooke Sect IV]

* PAGE 96,

(Right of the brothers)

(1) On failure of the father, the brothers³ shall share the estate. And likewise Manu⁴ says "Of him who leaves no male issue, the father shall take the inheritance or the brothers"

1 अदिनेयः = without any differentiation or distinction, quite generally

2 The following note by Mr. Colebrooke is important. The commentator *Bālabhāṭṭa* is of opinion that the father should inherit first and then the mother, upon the analogy of more distant kindred where the paternal line has invariably the preference before the Maternal kindred, and upon the authority of several express passages of law. *Nanda Pandita*, author of the commentaries of the *Mitāksharā* and on the institutes of Viṣṇu had before maintained the same opinion. But the older commentator of the *Mitāksharā* *Viśvanara Bhaṭṭa* has in this instance followed the text of his author in his own treatise entitled *Madana-Pārijāta*, and has supported Yājñavalkya's argument both there and in his commentary named *Subodhina*. Much diversity of opinion does indeed prevail on this question. *Śrīlara* maintains that the father and mother inherit together and the great majority of writers of eminence (such as *Aparāśila*, and *Kamalākara* and the authors of the *Smṛti Chandrikā*, *Madana Ratna* and *Vyākhyāna Mayukha* &c.) give the father the preference before the mother. *Jamatācārya* and *Raghunandana* have adopted this doctrine. But *Vāchaspati Miśra* on the contrary concurs with the *Mitāksharā* in placing the mother before the father, being guided by an erroneous reading of the text of Viṣṇu (Sect I § 6) as is remarked in the *Paramatraya*. The author of the latter work proposes to reconcile these contradictions by a personal distinction. If the mother be individually more venerable (See *Pāṇini* II 2 35 p. 1092 note 2 above) than the father she inherits, if she be less so, the father takes the inheritance.

3 *Nanda-Pandita* and *Bālabhāṭṭa* interpret the term brother as including sisters also. *Vide Pāṇini* I 2 68. According to them, the brothers succeed first, and in their default, the sisters: see *Bālabhāṭṭa* p. 209 II 25 27. See *Vinaya* vs *Lakṣmībala* 2 Dom. H. O. R. (O. C. J.) 117 at p. 123 where the controversy as to the 'sisters' being included in the term 'brothers' is referred to and discussed. See also *Krishna Rao vs Ram Chander* 24 All. 128 at p. 130. *Chandika Dulah vs Mana Anar* 24 All. 279. *Keari vs Ganga* 32 All. 641. *Budhanupā vs Lalit Singh* 35 All. 663. *Moolji vs Curandars* 24 Bom. 503, and *Bhagwan vs Warudai* 32 Bom. 300.

(2) As to what has been argued by Dhāreśwara¹, that 'under the following text of Manu:' "Of a son dying

Dhāreśwara's
argument

"childless, the mother shall take the estate; and, if the mother also be dead, the father's mother shall

5 "take the heritage", even while the father is living, if the mother be 'dead, the father's mother i. e. the paternal grand-mother, shall take 'the succession, and not the father: because wealth taken by the 'father may go even to sons dissimilar in class, but what is inherited 'by the paternal grand-mother, goes' to such only as appertain to the
10 'same tribe: and that therefore the paternal grand-mother takes the estate.' (3) This even the Holy teacher² does not assent to; because the

Not approved of
by Viśvarūpachārya

heritable right of sons even dissimilar in class has been expressly ordained by a passage above cited:³ "The sons of a Brāhmana (in the several tribes)

15 "have four shares, or three, or two, or one etc."

(4) As to the text of Manu⁴: "The property of a Brāhmana must "never be taken by the King; this is the settled rule", that intends the sovereign, and not a son⁵ (i. e. of the late owner by a woman of the Kṣatriya family)

1 Viṣṇāneśvara here takes notice of an opinion propounded by certain writers which is contrary to what has been stated above, about the succession of parents. Dhāreśwara is one of these, and the author refutes this opinion and reverts to the subject by a retrospect analogous to the rule known as "the lion's look" (सिंहलोका).

2 Ch IX. 217.

3 "Because if the wealth be regarded as taken by the grand-mother, it "would become a maternal estate and would go to sons of the same tribe, while a "father's estate would devolve on all the sons." Subodhini & Bālabhāṭṭa. This is a clear index of the meaning and extent of Stridhān according to Viṣṇāneśvara. It will be seen, however, that this distinction has no longer any force under the case law, as the grandmother succeeding to a grandson only takes a widow's 'estate', and on her death succession would be by reference to the last male holder. See *Gaṇḍhā Maganālā* vs *Bai Jada* 2 Bom L R. 574 at p 583 = 24 Bom 574, *Mars* vs *Channammal* 8 Mad at p 119-120.

4 i. e. Viśvarūpachārya, see Subodhini and Bālabhāṭṭa.

5 i. e. Verse 125 at p 1033.

6 Ch IX 189.

7 Here, the author intends to avoid a confusion which might arise on account of the term *Kṣatriya* indicating generally the ruling class. The author explains that the text intends the prohibition of an escheat to the sovereign, the ruling authority—and does not prohibit a son of a Brāhmana from a Kṣatriyā wife from taking.

(5) Among brothers also the uterine¹ brothers take the inheritance in the first instance under the text: "To him, who is the nearest *"supūda*, the inheritance shall belong", since the non-uterine brothers are remote through the difference of the mothers

(6) If there be no uterine brothers, those by different² mothers 5
inherit the estate

(7) On failure of brothers also, their sons⁴ share the heritage in the order of their respective fathers

1 Colebrooke translates half blood and whole blood for मिश्रद्वय and प्लव. Colebrooke adds in bracket (or whole), the expression in the Mitākṣharā is *Sodara* i.e. persons (born) of the same uterus, and the question would be of importance in the case of those among whom re-marriage of women is allowed by law. For in such a case, there might exist brothers who are 'uterine,' but not 'of the whole blood'

2 of Manu Ch IX 187

See *Subramanaya vs Sita Subramanaya* 17 Mad at p 320 *Vithalrao vs Ramrao* 2 Bom L R 154-157-24 Bom 317 and *Bhagwan vs Wardeo* 10 Bom. L R 389-32 Bom 300 where this passage has been referred to

3 According to the *Uyādhya*, the brother's son comes in after the brother. He does not agree with the opinion of the Mitākṣharā as here expressed (see Mandlik p 80 ll 29 36), see *Huridas vs Ranchhoddas* 5 Bom L R 516. But this rule does not go beyond brother's children. *Chandika Bala vs Muna Kuar* 24 All 273 (P O). The stricter rule of the Mitākṣharā was applied in *Kesri vs Kalla Prasad* 32 All 541 (P B) where an uncle of the half blood was given preference to the son of an uncle of the whole blood

4 This expression has received considerable judicial notice especially in Madras and Allahabad, the opinions expressed in the two courts differing from one another

According to the view expressed in Madras, the expression 'his son' पुत्र does not include 'grandson'. See *Suraya vs Lakshminarasamma* 5 Mad 291 *Chinnasami Pillai vs Kanju Pillai* 35 Mad 152, and this view seems to be in agreement with *Subodhini* (see p 74 ll 23 26, see also Mr Mandlik's note p 300). A contrary opinion has been expressed in Allahabad see *Kabon Rai vs Ramchandra* 24 All 126 *Budha Singh vs Lalla Singh* 34 All 663 at pp 667 and 675. See also *Kashiba vs Moraswar* 35 Bom 389=13 Bom L R 6a2. In the judgment of this case the word 'line' has been interpreted to extend to 6 degrees, and reference is made to *Bhaya Ram Singh vs Bhaya Ugar Singh* 14 M I A 373 at p 394 following what is known as the Harrington theory. As to the theory thus propounded by Mr Harrington, see Mandlik pages 380 383, its practical working out is not free from difficulty, (see West and Bahler's Hindu Law 3rd Edition p 124 seq.) The remark

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(8) In case of competition between brothers and brothers' sons, the brothers' sons have no title to the succession for the right of inheritance of brothers' sons is declared to be on failure of brothers

(9) When, however, a brother has died leaving no male issue, and the estate has devolved on his brothers generally, if any one of (such) brothers die even (yet) before a distribution of their brother's estate takes place, his sons do, in that case acquire a title through their father, and it is fit therefore, that a share should be allotted to them in their father's right, at a distribution of property between them and the surviving brothers

[Colebrooke Sec V]

[Succession of kindred of the same family name (agnates) termed Gotrajas or Gentiles]

(1) If there be not even the brothers' sons the *Gotrajas* take

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in 30 Bom at p 392 extending the line to six degrees was not called for by the facts of that case and it cannot be said that the rule in Bombay has been settled. As an illustration of the consequences of this dictum see *Ahmadacharya vs Govindacharya* 13 Bom L R 1000. Also see Telang J in *Pachara vs Kalingappa* 16 Bom 716 at p 719. And this claim is determined by reference to the paternal ancestor—no distinction based on the ground of blood having no place beyond cases expressly specified. See *Vallabhai vs Ramrao* 24 Bom 307. *Kesari vs Ganga Sahai* 32 All 541 (F R).

As between a nephew and a grand nephew no right of representation exists and the former excludes the latter *Sher Singh vs Basant Singh* 50 All 904.

1 See *Datt Purshad vs Thokur Dial* 1 All 100 at p 112 and *Jasoda Har vs Sheo Pershad* 17 Cal 33 at p 37.

2 See the rule of Yājñavalkya II 126 (2) on p 1017 II 23-24.

3 *Gotrajas*—this word is made up of the two parts *Gotra*=gens or family, and *Ja*=born. Persons born in or belonging to the family. Colebrooke has translated it as 'gentiles', while in 2 M I A. at p 101 it has been rendered as 'More distant paternal Kinsmen'. It should be remembered that the word has a special technical meaning attached to it and as a general rule the case with such terms they are better understood in their original form than by any equivalent of it in the same or other language.

The term *Gotra* may also be remembered along with this term. Generally both signify the same thing but strictly and literally there would be a slight difference between the two. For, the first means and indicates those who are born in the

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the estate. The *Gotraja*s are the paternal grand mother, the *Sapindas*¹ and the *Samānodakas* } (2) Among these, the paternal grand mother takes the estate first. Because, (although) the paternal grand mother's succession immediately after the mother was seemingly suggested by the text ² "And if the mother also be dead the father's 'mother shall take the heritage' no place, however, is found for her in the compact³ series of heirs from the father and others to the nephew, and the text 'The father's mother shall take the heritage' is intended simply to indicate her (general) competency for in

(*Contd from last page*)

(same) family while a *sagotra* is one belonging to the same family. And this difference becomes important in the case of the female *Sapindas* some of whom are of the same family : e (sagotra) though they may not be born in the same family, e g a mother a wife a daughter in law, while others are *Sapindas* born in the family (*gotraja*s) though they may not continue to be of the same family (*sagotra*) e g daughter, a sister. See *La'ṭibhaṭṭa* vā *Caṣṭha* 5 Bern 110 (p c) at pp 122 123-71 A 212 p 234 236 where the terms *Sapindas* &c are retained in their original form *Gotra* is not exactly on a par with the Roman *Gen* though the general principles underlying the two are the same. In the case of the terms *Sagotra* and *Gotraja* their literal meaning and technical significance should be particularly borne in mind. Thus e g the father's mother who has been pointed out by *Vyāṇeshvara* as the first in the line of the *Gotraja*s is a *gotraja* under the technical acceptance of that term : e *Sagotra* but if its literal meaning (*gotra*+*ja*) one born in the family) be taken, she is not. So per contra a daughter or sister though by reason of their birth are *gotraja*s (born in the family) under the literal significance of that term still according to its technical acceptance are not *gotraja*s because by reason of their marriage they are not *sagotras*—of the same family.

1 *Sapindas* and *Samānodakas*. These two terms have been explained further on in the text of *Mitākshara* quoting from *Bṛhan Mana* (p 1100 ll 8-13). The *Sapindas* referred to here are *gotraja* or *sagotra* *sapindas* and not any *Sapindas* covered by the definition of that term as given by *Vyāṇeshvara*. See note 1 on p 1071 (*supra*). 2 Of *Manu* Ch IX 217 (see p 1094 ll 4 & 5 *supra*).

3 Compact series of heirs : e The expression in the *Mitākshara* is *Baddhānāma* (These) whose order (of succession) has been fixed (as in a phalanx). The meaning is this—The mother takes as an heir named in the expression *Pitaram* parents : e mother and father and so immediately after her comes the father by virtue of the compound expression. Through the breach made by the father the whole 'serried phalanx' of heirs ending with the *Tatsuta* comes in leaving no room for the grandmother to enter and thus it is that she necessarily has to wait till a gap is left for her to enter. See *Madanata* vā *Kṛishnakata* c Bern 597 at pp 602 & 603.

heritance She takes immediately after his son¹ in the line² of succession; and thus there is no contradiction.

1 *Tatata*—i. e. the son of the brother See note 3 on p. 1095

2 'The line'—The original word is *santāna*—which literally means something which is going on continuously (*sam + tana*). How far this 'line' extends has been the subject of much discussion, and recently, this question has attracted considerable attention in Courts in India, especially in Allahabad and Madras, and in one case the Bombay High Court appears to have expressed a view in line with the Allahabad view, the Court in that case extending the 'line' to seven degrees.

According to the *Subedhā* the 'line' would appear not to extend beyond the '*tatata*,' the expression used by the *Mitākṣharā*, and Mr. Mandlik in an elaborate note has maintained this view, which would appear to be the proper view. See note above on p. 1095. See also the following cases: *Raja vs Gound* 1 Bom 105, *Vukhara vs Ramrao* 24 Bom 317 = 2 Bom L R 167 *Budhasingh vs Laltungh* 34 All 663 at pp. 667-676 *Channasami Pillai vs Kueya Pillai* 35 Mad 102 at p. 158 *Kashin vs Marthwar* 35 Bom 380 = 13 Bom L R 552 *Jallubhai vs Cassin* 5 Bom 121 *Surappa vs Lalshammarasappa* 5 Mad 205

Shidramappa vs Neelawada 57 Bom 377

In the appellate decision of *Budhasing vs Laltu Singh* 42 I A 208 the Privy Council have held that the word *Putra* as used here must be understood in a generic sense, as in the case of the lineal descendants of the deceased, and thus held that the grandson of an uncle had priority over the son of a granduncle. In a later case *Seetramisai vs Nataraja* 53 Mad 61 the Madras High Court, adopting the ruling in *Budhasing*'s case limited the extension of the line of the *gotraja*s to three degrees only. In the recent case of *Appaji vs Mahanlal* 32 Bom L R 700 (F B) the same point came indirectly for a decision, but no direct ruling has been given. The point which still requires a clear decision is up to what degree should the word 'line', *santāna*, be taken to extend? See *Lala Harish Pratap Baldev Singh vs Raj* 9 Buzrang 9 Luck 211

Uttaraḥ tatātānāntaram—in the line of a succession immediately after the *tatata*. There are variations in the reading of the passage in the *Mitākṣharā*, these are noticed by Balambhatta. (See p. 211 ll. 20-22.)

The compact series of heirs ends with the brother's son and does not include brother's grandson. Therefore a daughter-in-law has preference over the brother's grandson. *Appaji vs Mahanlal* 32 Bom L R 700 (F B), 54 Bom 564

Act II of 1929—According to this Act, the son's daughter, daughter's daughter, sister, and sister's son, are declared as heirs immediately after the father's father and before the father's brother.

The Lucknow High Court in interpreting this Act has held that the *Mitākṣharā* has been superseded by this Act, as regards sisters both where they were regarded as heirs before, as also where they were not so regarded. *Bhagwan Das vs Ladda* 8 Luck 610. It has been held that the Act applied to estates of those who died before the Act came into force if the estate vested in a female who was alive when the Act came into force: i. e. 21st February 1929, and the question of inheritance by reversion opened after that date, *Shamati Shalimata Das vs Ahushalya Doss* 17 Loh 354, 356

(3) In the absence of the paternal grand-mother, however, the *sapindas* born¹ in the same *gotra* (with the deceased), such as the paternal grand-father and others, inherit the estate; for *sapindas* of a different *gotra* are indicated by the term *Bandhus* (4) Among these, moreover, on failure of the father's line², the paternal grand mother, 5 the paternal grand father, the paternal uncles and their sons, are successively heirs to the estate

1 See note above and *Lallubha vs Cambar* 5 Bom at p 122-7 I A 236 *Saguna vs Sadashiv* 26 Bom 710 at p 713 *Umam Bahadur vs Udichand* 6 Cal 119 (F B) at p 120 *Kalkhanra vs Ramchandrar* 24 All 128 at p 131 See observations in 13 M A I A at p 378

2 Colebrooke translates, "In the absence of the paternal grand mother, the *gotrajas*, 'kinsmen born in the same family with the deceased' and *sapindas*, connected by funeral oblations, namely the paternal grand mother &c" Balambhatta insists that the grand father takes before the grand mother (See p 211 II 23 33) But the *Mayākhya* does not support him here as in the case of the parents Balambhatta's reasoning, however, is not convincing

"The commentator takes occasion to censure an interpretation which corresponds with that of the *Mitāksharā* as delivered in the following section (S 6 § 1), and according to which the cognate kindred of the man, himself, of his father and of his mother are the sons of his father's sister and so forth because it would follow, that the father's sister's son, and the rest would inherit, although the man's own sister and sister's sons were living Balambhatta, however, repels this objection by the remark, that the sister and sister's sons have been already noticed as next in succession to the brother and brother's sons which is indeed Nanda Pandita's own doctrine

"He adds, 'after the heirs above mentioned the *sākulās* or distant kinsmen is entitled to the succession meaning 'a relation in the fifth or other remote degree'

"This whole order of succession, it may be observed, differs materially from that which is taught in the text of the *Mitāksharā* On the other hand, the author of the *Viśvamīrodhaya* has exactly followed the *Mitāksharā*, and so has *Kamākshara*, and it is also confirmed by *Yādhuśākhya* in the *Vyākhyāna Māhātmya*, as well as by the *Smṛti-chandrikā*

"But the author of the *Vyākhyāna Mayākhya* contends for a different series of heirs after the brother's son '1st, the paternal grand mother, 2nd the sister, 3rd the paternal grand father and the brother of the half blood, as equally near of kin, 4th the paternal great grand father, the paternal uncle, and the son of a brother of the half blood sharing together as in the same degree of affinity' He

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(5) On failure of the paternal grand father's line, the paternal great-grand mother, the paternal great grandfather, his sons and their sons (inherit). In this manner must he understood the succession of *sapindas* of the same *gotra*, as far as the seventh (ascendant)

- 5 (6) If there be none such, the succession devolves upon the *samānodakas*, and these must be understood to be seven (in degrees) beyond the *sapindas*: or else, as far as the limits of knowledge as to birth and name extend. As says Bṛhan-Manu "The relation of the
10 "*sapindas* ceases with the seventh person, and that of the *samānodakas* "ceases (after extending) as far as the fourteenth (degree), or as "some affirm, (it reaches) as far as the memory of birth and name "(extends); after that is indicated by (the term) *gotra*"

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has not pursued the enumeration farther, and the principle stated by him—nearness of kin does not clearly indicate the rule of continuation of this series—"
Colebrooke

Having regard to the importance of the point involved and having regard to the divergence of views expressed in India in quite recent times, the necessity of a definite decision on this point will soon arise, when the authorities referred to above will be of use

1 *Samānagotra-sapindas*—are those *sapindas* who belong to the same *gotra* as that of the deceased

2 To the same effect as Manu Oh V 60 It runs thus

सपिण्डता तु पुरुषे सप्तमे विनिराते । समानोदकमावस्तु जपमानस्येदेवे ॥

The Vyavahara-Māyukha refers to this passage, Tr "The *Sapinda* relation ship ceases with the seventh person [in the line] and that of *Samānodakas* (i.e. those connected by an oblation of water) ends when births and names are no longer known " Mandlik p 82 ll 10 13

Relying on this and other texts it has been held in *Bai Deolara vs Anantaram Jamatram* 10 Bom 372 at p 379-380—that the word *Samānodaka* includes descendants from a common ancestor more remotely related than the thirteenth degree from the propositus

See also *Umaid Bahadur vs Uday Chand* 8 Cal 119 (F B) *Mari vs Chinnast* mal 8 Mad at p 128 *Ram Darun Lal vs Kamla Prasad* 32 All 504 at pp 597-598 where it was held that a *Samānodaka* is a nearer heir than a *bandhu*, and *Bhynch Ram Singh vs Bhagat Ugar Singh* 13 M I A at p 380 *Halgauda vs Somappa* 33 Bom 660 at p 663 See also *Jadunath Kuar vs Bisheshwar* 59 I A 173 at pp 189 190

[Colebrooke, Sect VI.]

* PAGE 97.

[Of the succession of cognate kindred or Bandhus]

(1) (On failure of the *Gotrajas*;¹ the *Bandhus* succeed to the estate) Bandhus moreover, are of three kinds, the *Ātma-bandhus* (or his own bandhus), the *Pitr-bandhus* (or his father's bandhus), and the *Mātṛ-bandhus* (or his mother's bandhus); as has been declared² (by the following text) " The sons of his own father's sister, the sons of

5

1 *Gotrajas* and *Bandhus*—See note above Both are *Sapindas*, but the former are *Sapindas* of the same *gotra* or *Sagotra-Sapindas*, while the latter are *sapindas* of a different *gotra* or *dharmagotra sapindas* Mr Colebrooke translates these terms as, " gentiles and cognates " See *Muthusami vs Sumanabai Muthulakshmanasami* 23 I A 83-89=19 Mad 405

N B In Bombay Widows of *gotraja sapindas* succeed after the males in each line These take *her capita* and not *her stirpes* *Kallava vs Vithoba* 32 Bom L R 996

2 Bilambhatta assigns this text to *Vṛddha Sāstīya* (see p 214 l 28), but it is ascribed to *Baudhāyana* in *Vyākhyāṭya-Mādhava* (see p 354 Bibliotheca India Series)

Bandhus—The enumeration of *bandhus* given here is not exhaustive but only illustrative *Girdhars Lal vs The Bengal Government* 12 M I A 448, *Mukund vs Krishnabai* 5 Bom 597 at p 601 *Lakshmanmai vs Tirunengoda* 5 Mad 241 at p 245 A contrary view was expressed in *Narasamma vs Mangamma* 13 Mad 10 at p 13, but having regard to the decision of the Privy Council in 23 All 88 and 19 Mad 405 cited above, the reasoning of the decision in 13 Mad 10 would seem not to apply now, even to Madras, nor does it " determine the order of succession as between several lines within each of the series of *bandhus* " per Jenkins C J in *Seyuna vs Sadashiva* 4 Bom L R 527 at p 530-26 Bom 710

In *Gajadhar vs Gauri Shankar* 54 All 693 (F B), however, the Allahabad High Court has held otherwise According to it the classes cannot be added to (p 704) In order to succeed as a *Bandhu* it must be proved that a mutuality of relationship as *Bandhus* was established (705) Therefore a father's sister's son's daughter's son was held not to be a heritable *Bandhu* (*Ibid*) See also pages 701-718 and 719-735

The *sapinda* relationship of a *bandhu* ceases after five degrees from the common ancestor *Ramchandra Martand Vankar vs Vinayak* 42 Cal 384

The son of a half sister of the father has preference over the son of a sister of the mother, because the former confers greater spiritual benefit than the latter, *Jotindra Nath Roy vs Nagendra* 33 Bom L R 1411 (P O)

The step-son of the step sister of a male is not an heir *Samantha vs Angammai* 45 Mad 257

Father's brother's grandson succeeds before the brother's great-grandson *Venkatessara Rao vs Adinarayana* 58 Mad 323



- “his own mother's sister, and the sons of his own maternal uncle,
 “should be considered as the *Ātma bandhus* (or his own bandhus)
 “The sons of his father's paternal aunt, the sons of his father's
 “mother's sister, and the sons of his father's maternal uncle, should
 5 “be known as his *Pitr bandhus* (or his father's bandhus) The sons
 “of his mother's father's sister, the sons of his mother's mother's sister,
 “and the sons of his mother's maternal uncle should be known as his
 “*Mitr bandhus* (or his mother's bandhus) ”

- (2) Here also, by reason of near affinity, first the *Ātma bandhus*
 10 succeed to the estate, on failure of them, the *Pitr bandhus*, and on
 their failure the *Mitr bandhus* (succeed) This must be understood
 to be the order (of succession here intended)

[Colebrooke Sect VII]

[²Of the succession of strangers upon failure of the kindred]

- 15 (1) On failure of the *bandhus*, the preceptor³, and on failure of
 him, the pupil (succeeds) according to the text of *Āpastamba* ¹ “On
 ‘failure of the sons the nearest *sapinda* (inherits), on failure of
 ‘them, the preceptor, on failure of the preceptor, the pupil (shall
 ‘take the wealth) ” (2) (If there be no pupil, the fellow-student is

1 The three kinds of *bandhus* mentioned here are not mentioned in *Aparāṅka*
 (see p 745 *Ānandasrama* No 45), see however *Mayukha* (Mandlik, Sk p 50
 Eng Tr p 82 l 28 &c)

2 *N B* Now follow the principles of succession of strangers It may be
 noted that this line cannot be resorted to unless and until all the sagotra and other
 relations are exhausted See *Lalshāmanasmi* vs *Tiruvengada* 5 Mad 241 at p
 246 See also *Umed Bahadur vs Uday Chand* 6 Cal 119 16 Bom

3 *Āchārya* is the word in the text for the English word preceptor There
 are other terms indicative of the same such as *Guru* *Upādhyāya*, *Rishi* &c, but
 there are minute distinctions in their import See *Yājñavalkya* I 34 35 Tr
 pp 126 127 *Manu* Ch II 140 143, where all these terms are explained and the
 importance of each is indicated See also *Amarakosa* II 7-(6-7)

4 *Dharmasūtras* II-6-14-(2-3)

the successor } He, who received his investiture, lessons¹ (in the scriptures) with their meaning, and thus acquired knowledge proceeding therefrom from the same preceptor, is a fellow-student

(3) If there be no fellow student, some learned² and venerable priest should take the property of a *Brāhmana* according to the text of Gautama³ } *Srotriya*s or venerable priests should share the wealth "of a *Brāhmana* who leaves no male issue" (4) For want of such a successor, any *Brāhmana* (may be the heir), As says Manu⁴. "But on failure of all (the heirs) *Brāhmanas* (shall) share the estate, such (*Brāhmanas*) as are versed in the three Vedas, (and are) pure and "self controlled, thus the law is not violated" 10

(5) (Never shall a king take the wealth of a *Brāhmana*,) vide the text of Manu⁵ "The property of a *Brāhmana* shall never be taken by a king, this is settled law" It has also been said by Nārada "If for the wealth of a *Brāhmana*, on his demise, there be no heir, it "must be given to a *Brāhmana*, (acting) otherwise⁶, the king becomes "tainted with sin" 15

(6) The wealth of a *Kshatriya* and others, (however) in the absence of heirs down to the fellow student, the king may take, and not a *Brāhmana* } As says Manu⁷ "But, (the property) of other "classes on failure of all (heirs), the king may take" 20

1 The expression in the text is *Adhyayana*—study The study of the Vedas is the most important part of a Man's education, and an *Adhyayana* necessarily includes their study In fact *adhyayana* means *par excellence* the study of the Vedas

2 *Srotriya*—a learned Brahmana and not a mere *Brāhmana* Note the following

अन्मना नाद्वयो हेम सकरोदित उच्यते । विद्यामयी नरोदित भविष्यतिमिति हि ॥

The derivation of the word is explained by reference to two rules of Grammar by Pāṇini 5-2-84 and 4-2-59 the result of which is that the term is applicable to such a *Brāhmana* as has mastered the whole *Veda* lore

3 Ch XXVIII 39

4 Ch IX 188

5 Ch IX 189

6 Otherwise—i.e. if he takes it himself (see *Bhāṣābhāṣya* p 216 l 7)

7 Ch IX 189

Vāṁśatraya

Now, in the absence of the twelve sorts of sons, the Author discusses those who would take the property

Yājñavalkya, Verses 135-136

- 5 *Apurasya* १, 'Of one without issue, & without any of the twelve sorts of sons, and without a grandson or a great grandson, *śrīyasya*, 'one departed for heaven & who has died, of the wife and those others stated, in the absence of the one prior 'each one next in order *uttarottarah*, becomes *dhenabhik*, 'entitled to the property' Thus this
- 10 *vidhi*, 'rule, regarding the succession to the property of one dying without issue is equal in all classes, *sarvavarniḥ*

- There first the wife is entitled to the property, such a one, however, is to be understood to be one who has been consecrated by the sacrament of marriage, vide the rule 'the substitute ३ replaces the
- 15 "final २ of ३ before the feminine affix ४ when the word so formed 'indicates 'a wife who takes a part in the sacrifices of her husband.' Here *kātyāyana* states a special rule "A wife takes the property of her husband who is not unfaithful failing her, however, the daughter, "if she be unmarried then. If the wife, however, be unfaithful,
- 20 *Narada* states a rule "In the absence of the son, however, the daughter, 'as she has been declared to be equal to a son' "When the wife "does not exist the unmarried daughter of the same class as that of the "father, succeed to the property', vide the forestated text of *kātyāyana*

- Some say that this has a reference to the appointed daughter
- 25 That is not proper, since even when the wife is living she is entitled to the property, since under the text of *Vasishtha* १:२ "The third is the " *pūtrikā* herself, has been regarded as a son. Also this text of *Bṛhaspati* "From his several limbs is produced, like the son, the "daughter of a man, when she herself is living how can any other take
- 30 "the property? (56) Equal in caste (to her father) and married to a man "of the same caste as her own, virtuous and devoted to service, whether "she be appointed or not appointed as a son, she has been considered "as entitled to take her father's property (57) Here, moreover, the marriedness is qualitative of the appointed only and not also of the not appointed even, vide the text of *Kātyāyana*, so hold the Southerners
- 35 As a matter of fact, however, the meaning of the word daughter here *viz* 'not impotent, not appointed, mentally regarded as a daughter' is without including her among the sons in an equivocal manner

1 Of Grammar, IV I 33

2 Ch XIII 50

3 Dr. Jolly reads सुपुत्रकन्यायाङ्ग

4 Ch XVII 15

5, Ch XXV 56, 57

From the original text, "women are not entitled to an inheritance "is they are without vigour", and by the contraction and limitation of the text of Manu¹ "Of a sonless man the father shall take the property, "or the brothers even, thus way would be in pursuance of the usage of the Maitihlas

Pitarau, 'the parents', i.e. the mother and the father. These by reason of the two texts, viz. "Weak etc. and also by reason of the order in the text of Kātyāyana, viz. "Of him (dying) without issue, the wife of a good "family, or the daughters also, in their absence, the father, the mother "and also the sons, have been declared (to be heirs), although, (the property goes) to the father, and in his absence the mother takes the wealth, it is clear that this is so under the text of Vishnu² viz. "Of a "sonless man, the property goes to the wife, failing her to the daughter, "in her absence to the father, and in his absence to the mother

Thus therefore the statement of Mitākṣharā³ "That because in the "solution clause of the compound the word mother happens to be placed "first, and also because as compared with the father she does not happen "to be the parent of a child born of another mother and thus having a "common propinquity is doubtful⁴

Failing the mother, the uterine brothers, in their absence the brother's son, and in his absence the *gotraja sapindas*, *sahūyas*, and the rest according to the nearness of their relationship. In the absence of these the *Bandhus* technically described as "The sons of one's "father's sister, the sons of one's mother's sister, and the sons of one's "maternal uncle are to be known as 'one's own *Bandhus*, *Ātmabandhus* Failing these *Sishyah* 'the pupil, in his absence the *Sabrahmachari* 'co-student, i.e. one who received his initiation and the study of the *vedas* from the same preceptor.

Here, by the use of the word *cha*, 'also', is included the right of a step brother in the absence of the uterine brother, by the use of the word *tathā*, 'similarly', in the absence of the *Ātmabandhus*, those of the *Pitrbandhus*, and in their absence, of the *Matrbandhus* as technically defined, and in their absence also that of the Preceptor's right to succeed. By reason of the nearness of relationship also under the text of *Āpastamba*⁵ In the absence of the preceptor the resident 'student is the statement in short Nārada⁶ "Even on failure of all the 'heirs, the *Brāhmanas* shall share the estate, such as are versed in the 'three Vedas (and are) pure and self controlled, thus the law is not "violated. The property of a *Brāhmana* shall never be taken by a King, "this is the settled law, but of other classes on failure of all, the King "may take (135-136)

1 Text S VI 5 8

2 Ob IX 185

3 Ob XVII 46

4 See p 1092, l 7 above

5 Text p 95 l 18

6 Dh S II 5 143

7 See Manu Ob IX 186, 189

S ūlapāni

Now the Author mentions the distribution of the property of one without a son

Yājñavalkya, Verses 135-136

- 5 *Aputrayas*, 'Of one without an issue,' dying, among 'the wife' and the rest, in the absence of the one preceding, the one succeeding becomes (the heir) So *Viṣṇu*¹ "The wealth of one without a male "issue goes to his wife, in her absence to the daughter, in her "absence to the mother, in her absence to the father, in his absence
10 "to the brother" and so on This moreover is applicable to those who are equal So *Bṛhaspati*² "Although the *Sakulyas*, the father, "the mother, and the uterine brothers exist of one who has died without "issue, the wife is entitled to take the estate " This right of the wife even when the brothers exist, has reference however, to the wife endowed
15 with eminent good qualities And the quality consists in the (performance of the) *braddha*, maintaining (unsullied) the bed and such other vows So (says) *Vṛddha Manu* "The widow of a childless man, keeping 'unsullied her husband's bed, and persevering in religious observances, "shall herself present his funeral oblation and obtain the entirety of his
20 "estate " In this manner also "Of one who has died without issue the "property goes to the brothers, in their absence the parents shall take, or "the senior wife," this text of *Paithīnasi*, has reference to a wife who is devoid of qualities and who is guilty of adultery The text of *Saṅkha*³ is "They should make provision for the maintenance of his wives till
25 "his death, provided they preserve unsullied the bed of their lord They "may, however, cut off in the case of those who behave otherwise," should also be taken as applicable (in this manner also) to this subject

- "In the absence of the sons, however, the daughter as she is equally
30 "regarded as in the line the son, as well as the daughter, both are effective "in perpetuating the lineage," this text of *Nārada*⁴ has a reference to the *Putrākāputra* So *Bṛhaspati*⁵ 'Equal in caste (to her father) and married to "an equal, virtuous and submissive Whether (she was) appointed or "not appointed as a son, the daughter shall take the father's property "

1 Ch XVII 4-8 *Viṣṇūcharya* cites this as the text of *Bṛhadarṣṇa* see p 1067, II 6 11 (above) 2 Ch XXV 46

3 In the *Viśākṣarā* this text has been cited as of *Nārada* see above p 1068, II 9 16 and *Nārada* XIII 26

4 See *Nārada* XIII V 60 where the reading is पुत्रसमस्तकण्ठात् It should be noted, however, that this text occurs in the *Smṛti* of *Nārada* in the chapter in which in an earlier stage (Verse 2) the order of heirs given is, sons, mother, daughters in their absence, their sons *Śūlapāni* takes it as having a reference to the *Putrākāputra*

5 Ch XXV 67

The meaning is, whether she was intended to be made an appointed daughter or not

"The parents, and brothers likewise"—(in this) the right of the parents when the brothers exist, is in regard to the property acquired by the father, grandfather &c. For what was acquired without detriment to such ancestral estate, even when the parents exist, such property belongs to the brothers. As says Devaia "Thereafter, the property of a sonless man, the uterine brothers shall divide, or even the daughters equal (in caste), or if he be living, the father also" Among these *i. e.* the wife and the rest, in the absence of the one prior to the one next in order. Gone to heaven viz dead (135-136).

[Colebrooke Sect. VIII]

[On¹ succession to the Property of a Hermit or an ascetic]

(1) It has been declared that sons and grandsons² also take the *dāya*, and that on failure of them, the widow and others (succeed)

1 This is an exceptional rule stated specially to be applicable in the case of hermits &c., see *Gajraj Puri vs Achander Puri* 16 All at p 195 Mayne on Hindu Law § 506 West and Bühler's Hindu Law p 532 In *The Collector of Dacca vs Jagat Chander Gossami* 28 Cal 608, an application was made for letters of administration to the estate of a deceased disciple. It was opposed by the Collector of Dacca on behalf of Government. But the report does not give the grounds of the opposition, nor does it give any details. The High Court (Maclean C J and Banerjee J) confirmed the order granting the 'Letters' as prayed for. On this passage Mr J U Ghose observes at p 788 (2nd Ed) 'With all respect to the learned judges, it should be observed that according to Hindu Law, the ordinary case of succession should apply to that strange individual the married ascetic. Indeed, according to ancient law ascetics who have resumed worldly ways, are slaves of the King and their property in strictness belongs to him' (citing *Nārada*). The report does not give good ground for these observations, nor, it is submitted, are the observations justifiable on the general customary law prevailing among the hermit sects such as the *bairagi gosavis* &c. See also *Chāṇḍiya vs Dacca* 29 All 109 at p 128

2 Mr Colebrooke adds after grandsons in bracket, ('or great grandsons') relying upon Bālabhatta who suggests the inclusion of great grandsons on the strength of the conjunction *Chā* also. Upon this translation it has been observed at p 378 of 13 M I A *Bhagat Pam Singh vs Bhagat Ujar Singh*. This incorporation of the words 'or great grandsons' in the text of the Mitāksharâ, shows that the translator (whose authority is of the highest order) considered that the inclusion of the great grandson, among immediate heirs was the approved doctrine of the later class of the expositors of the law of Benares.

The Author now propounds an exception to both these .

Yājñavalkya, Verse 137

✓ Of a hermit of an ascetic, and of a life long celibatist, the heirs to the property are in their order, the preceptor, the virtuous pupil the spiritual brother and associate in holiness.

(2) Mitākṣharā — Wānaprasthāśya of a hermit, yateb, of an ascetic,² and brahmacharināścha and of a life-long celibatist, kramena, in their order, i.e. in the inverse³ order, āchāryah⁴, the preceptor, sachchishyah a virtuous pupil, dharmabhrātrakaturthi cha and a spiritual brother and associate in holiness also are successors rikthasya to the property, i.e. of the wealth

(3) The Life long celibatist must be a professed⁵ or perpetual one, of a temporary student however, the mother and the other heirs alone take. And the preceptor is declared to be the heir to a professed student as an exception⁶ (4) A virtuous pupil, however, takes the property of a yati or ascetic Sachchishyah, a virtuous pupil,

1 The condition of being virtuous is a general requisite for a pupil. The preceptor and the spiritual brother become successors only if they are virtuous, and so the qualifying clause has been placed in the middle (see Subodhini p 74) and so Vijnanesvara observes further on that even a preceptor, if ill-conducted does not become entitled to a share

2 The terms 'hermit' and 'ascetic' are severally used for the two words 'Vanaprastha' and 'Sannyasi' which indicate two distinct orders

3 See Balambhatti p 244

4 For the full significance of this term गुरु and its distinction from the other terms of similar import see Yajñ I 31 and 32 and Manu Ch II 140-142 (see note 3 on p 1102 above)

5 i.e. Anashrita as distinguished from the Upasaka śāśna

It is derived as विद्या मये नम्यमाने गुरुवचनं विदिति (विद्या-टिप्प)

A perpetual religious student who continues with his spiritual preceptor even after the prescribed period, and vows life-long abstinence and charity See Yajñavalkya I 40 pp 140-141 above in Part I

An Upasaka śāśna—i.e. only a temporary student. He is in a state of pupilage for a limited time, wishing to pass on into the state of a householder (grahastha).

6 i.e. to the claim of inheritance of the mother and other heirs (see Subodhini p 74 I 32 Balambhatti p 244 I 24)

again, is one who is assiduous in receiving¹ lessons in theology², in retaining the same, and in practising its ordinances. For, a person whose conduct is bad is unworthy of the inheritance, were he even the preceptor or any like other. (5) A spiritual brother and associate in holiness takes the property of a *vānaprastha*, *hermit*. Dharmabhṛātā, a *spiritual brother*, is one who is engaged³ as a brotherly companion. Ekaṭūrthi, an *associate in holiness*, is one appertaining to the same hermitage. One who is 'a spiritual brother' and also 'appertains to the same hermitage' is "a spiritual brother and associate in holiness"

(6) In⁴ the absence of these *viz.*, the preceptor and the rest, an associate in holiness alone takes even though sons and other (natural) heirs exist.

(7) Indeed by the text of Vasishṭa⁵ *viz.* : "But those who have entered into another order receive no share," there is not even the right of inheritance of those who have entered into another order; how can there be a partition of their property? Nor has a professed⁶ student a right to his own acquired wealth: for the acceptance of donations and other means of acquisition are forbidden to him. And since Gautama⁷ ordains that "A mendicant shall have no hoard," there is no possibility of the self-acquired wealth in the case of a mendicant also.

1 Mr Colebrooke translates "who is assiduous in the study of theology &c." The original specifies three distinct stages of the 'study' *viz.* of (1) *Śikṣā* listening to the lectures or receiving the lessons, (2) *dhārmā*—retaining them and (3) *Tadārtthānuvṛtṭāna*—practising its ordinances intelligently

2 The original is *Adhyātma* : *e* that which addresses itself to the soul: *e* Philosophy That portion of religious study which refers to the study of Philosophy

3 *e* who has taken a vow or undertaking, and who has been accepted as a brother (see Subodhini p 75 l 6 Bālamhatti p 245 l 2)

4 To the enquiry as to who should be the heir to the property of a *Brahmachārī*, *Yati* and *Vānaprastha* in the absence of the heirs named above, the Author has mentioned the *Ekaṭūrthi* "an associate in holiness" (See Subodhini p 95 l 7.)

5 Ch XVII 52

6 *Śikṣit* : *e* he cannot claim anything as his self acquisition The expression in the *Mitākṣharā* (p 97 l 29) is *स्वर्जितवत्सवत्* *Swarjita dhanavatsavāt*

7 Ch III 11

(8) The answer is * As for the *Vānaprastha*, a hermit may have

The Answer property, under the text¹ "He (a hermit i.e.
"Vānaprastha) may make a hoard of property suffi-

cient for 1 day, a month, six months or a year, and in the month of

5 "Āsvin he should abandon what has been collected," he certainly may

*PAGE 98 have property The *yati* or, 'ascetic', too, under
the text² "Or he should wear clothes to cover his

"privy parts, and he may also take the requisites for his austerities,"

"as also sandals", may possess clothes books and other requisites

10 The professed student also can have clothes and other property for
his bodily sustenance (9) And it was therefore proper to explain the
distribution of such (property)

Vīramitrodaya

15 After mentioning the successors to the property of a householder,
the Author mentions those of hermit etc

Yājñavalkya Verse 137

Under the text¹ "one should amass wealth, and the wealth thus

'amassed, one should give over in the month of Āsvin, the property

20 'which a *vanaprastha*, 'hermit, possesses and under the text² "one may

'take the requisites for the *yoga* practises, as also sandals, the property

of a *yati* 'an ascetic, and the property of a *Brahmachari*, 'a celibate

student, such as clothes and such other things for covering (the body)

the characters of that are respectively the *ācharya*, 'preceptor, and the rest

i.e. in the absence of the prior, the next one etc in order

25 *Ācharyo*, 'the preceptor, *sachchishṛyāḥ*, 'a virtuous pupil, i.e. a

pupil capable of listening attentively and assimilating the knowledge

of the soul, *śātarthi*, 'a co-student, one who has received his learning

from the same preceptor, and the same also a brother in religious

30 (practises, as the preceptor who is equal to a father, was the same
(for both) (137)

1 Of Yajñavalkya *Prayascittādhyaya* 47 (p 196 ll 15-16) a) o Mann
Ch VI 16

2 of a *Bṛmā*—author not known

3 *Yogasambhārābhāṣā*—the different articles required for practicing *loga*
i.e. the works treating of the same (See *Sobodhani* p 75) G Dalmabhatta p
245 l 15)

Śūlapani

Yajñavalkya Verse 137

Dī aruñbī rñi a spiritual brother as also *ekai rñi* 'an associate in holiness — thus it is a *karmadī āra ja* compound *Ekai rñi* an associate in holiness : *e* one who has a common preceptor The rest is clear (137)

[Colebrooke Sec IX]

✓ [On the union of kinsmen after partition]

{(1) The Author next¹ propounds an exception to the rule that the wife and certain other heirs succeed to the estate of one who departs for heaven leaving no male issue

10

Yājñavalkya, Verse 138 (1st 3rd and 4th quarters)

A re united however shall keep the share of his re united² (parcener) who is deceased, or shall deliver it to one born)

(2) Mitakshara — Effects which had been divided and which are again mixed together, are termed re united He to whom such appertain is a *samsrñbñi* a re united parcener

10

(3) Re union³ moreover, cannot take place with any person indifferently but only with a father, a brother or a paternal uncle as Brhaspati⁴ declares "He who being once separated dwells again through affection with his father brother or paternal uncle is termed re united" (4) *Tasya Samsrñbñah* of such a re united parcener the share or allotment must be given by

20

1 Next : c after laying down the special rule of succession in the case of heirs &c the Author propounds another rule which is also of a special nature and is thus an exception to the general course of succession given in Yajñavalkya II 135 and 136 (p 1065)

2 The construction here is terse and also involved The first and the second quarters make in themselves independent clauses But these again are severally connected with the two verbs *dadgat* and *apāñaret* in the third quarter which again are alternatively connected with the two qualifying expressions *jatasya* and *mrtasya*

The translation given here is as adopted by Colebrooke The Mitakshara takes the first quarter by itself and the 2nd 3rd and 4th quarters together separately So that as put by Vijñanesvara the translation would read thus

(Verse 138 1st quarter) Of a re united however the re united

(2nd 3rd and 4th quarters) — Of a uterine brother however a uterine al deliver as well as keep the al are (to) one who is born or (of) one who is deceased

3 Re-union — Must be proved as a fact Therefore according to the Mitakshara parties to re union must be those who were parties to their full partition and also that only father brother and uncle could re unite *Ram Varan Chaudhury vs Panher* 37 Bom LR 144 (PO) 14 Patna 268 *Basanta Kumara vs Jogendra* Aitch 33 Cal 371

4 Ch XXV 72 (Sacred Books of the East Vol XXXIII p 361)

the surviving re united parcener, to a son subsequently born, in the case where the widow's pregnancy was unknown at the time of the distribution. On failure of male issue the re united parcener¹ alone shall take the inheritance and not the widow or any other heir.

(5) The Author states an exception to the rule that a re united member shall keep the share of his re united parcener.

Yājñavalkya, Verse 138 (2nd quarter)

But an uterine² brother of his uterine brother

(6) Mitakshara —The expressions of a re united, a re united are to be (taken as) understood here. Hence, the allotment of an uterine re-united brother who is deceased, shall be delivered by the surviving uterine re united brother to a son born³ of the re united. On failure of him he shall retain it. This is the construction as before. Thus if there be uterine and non uterine brothers together, the uterine re-united brother alone will take the estate of a uterine re united parcener and not the non uterine one even though re united. This thus is an exception to what has been said before.)

Sūlpani

Yājñavalkya Verse 138

The re united has been described by Brhaspati⁴. He who being (once) separated dwells again through affection with his father or brother or paternal uncle such a one is termed re united. *Sattvaśāḥ* aḥ. Of the re united such as the brother &c who is dead *sa śreṣṭh* the re united such as the brother &c shall take the property *Sodaraśāḥ* tu. Of the uterine brother however *ī e* (who was) re united *sodarah* the uterine-brother re united alone shall take and not a step-brother. If the re-united die after conception was produced then upon the birth of the child in the womb his property one should give to him alone also.

1 The singular number is indicative of the whole class of re united parceners.

2 Colbrooke adds in bracket (or whole) but the expression in the text is *sodarah*—meaning he who was born from the same womb. The term uterine may mean the same as whole in those cases where women marry only once. But it cannot be an universal equivalent as it is possible for a woman to have several sons from different husbands and such sons although they would be uterine brothers or *sodarah* will not be whole brothers.

A uterine brother though not re united succeeds to his brother who had separated and had re united with the father. *Bṛhad* a va *Yajñ* a 6 Luck 450 (F B)

3 *ī e* born subsequently to the death of the parcener the widow's pregnancy not having been noticed then.

4 Gh XXV 72

This (rule as to the) right of the re-united is (applicable) in the absence of the son wife father and mother as says Bṛhaspati' If any "one die or enter the fourth order on any account his property will not lapse his re-united brother not being a step-brother shall take his property (138)

(7) Next in answer to an inquiry who shall take the succession when a re-united parcener dies leaving no male issue and there exists a half brother re-united and an uterine brother non re-united the Author delivers a reason why both shall take and divide the estate

Yājñavalkya, Verse 139

A half brother, being re-united may take the succession but not a half brother not re-united but one united (by blood though not by parcenary) may obtain the property though not re-united and not (exclusively) the son of a different mother

Mitākharā (8) —Anyodaryah a non uterine brother, i.e. a brother born of a rival wife being samsrshṭa a re-united parcener, takes the estate, na anyodaryo dhanam hareṭ asamsrshṭa but not (that) a non uterine brother does obtain the goods who is not re-united Thus by the tests of the affirmative and the negative reasoning re-union has been shown to be a reason for a half brother's succession to the property

(9) The term 'not re-united' is connected also with what follows and hence even one who was not re-united may take the wealth of a (deceased) re-united (relative) Who is he? (so) the Author says Samsrshṭah one united i.e. one united by the identity of the womb in other words an uterine brother By this it has been declared, that relation by the identity of the womb is the foundation of the (right of) succession of an uterine brother though not re

1 Ch XXV 4

2 This text also admits of several constructions

3 In analogy of the rule in Madhyamaṇi Vyāsa or the maxim of the central jewel or Kalālāṇi Vyāsa—like a crow looking two ways

4 Upon this passage the author of the Subodhani remarks in like manner a father though not re-united with the family shall take a share of the property of his son and a son though not re-united shall receive a share of the estate of his father from a re-united parenter and in support of this conclusion he relies upon the passage Manu IX 8 The husband enters into his wife and there having transformed himself into a father the wife becomes a mother &c (See p 78 ll 2-5) But Balambhatta refutes this (at p 247 ll 16-20) and he refers in the end to the Mitākharā itself which makes (1 23) its own meaning clear by adding at the end that by it is meant the uterine brother

For Mayukha see text pp 65-67 & Tr pp 118-127 Gharapure's editions

united in coparcenary (10) the term 'united' likewise is connected with what follows, and there the term 'united' signifies one who is 're united' (as a coparcener)

5 Nānyamātrjah, *not the son of a different mother*, this expression must be interpreted by supplying the affirmative particle *etā*, 'alone', understood *i.e.* although re-united, one born of a different mother cannot exclusively take the wealth of his re-united parcener

10 (11) Thus, by the occurrence of the word *api*, 'though', in the expression 'though not re united' (above p 1113 l 10), and by the denial implied in the restrictive affirmation *etā* 'alone', understood in the expression "*one united* (by blood, though not by parcenary), *and* "*not the son of a different mother*" (above p 1113 ll 10 11), it is shown that the property should be divided and distributed to a whole brother not re united, and a half brother who is re united; for the reasons of
15 the right of succession of both subsist at the same time (and independently)

(12) This very thing is made clear by Manu¹ who after premising partition among re united parceners "If brethren, once divided
20 "and living again together as parceners make a second partition etc." declares, 'should the eldest or youngest (of several brothers) be 'deprived of his allotment at the distribution, or should any one of "them die, his share shall not lapse. But his uterine brothers², and "such brothers as were re united, and also his uterine sisters shall assemble together and divide his share equally."

25 (13) Thus among re united brothers, if the eldest, the youngest or the middlemost, 'at the distribution'—during the distribution—(for under the rule of grammar) the undeclinable termination *tas* denotes any case *i.e.* at the time of making the distribution—*be deprived i.e.* forfeit, his own share, on
30 account of his entrance into another order, or by the offence of Brahminhood or by any other like cause, or if he be dead his share shall not lapse, but shall be set apart, and not that the re united parceners shall take exclusively. This is the meaning

1 Ch IX 210-212

2 Colebrooke translates 'uterine brothers and sisters'. The expression is *sodaryā* which may admit of sisters, but these have been again mentioned in the last clause

The Author states the appropriation of the share so set apart 'his uterine brothers shall divide it &c.' That share so set apart, his uterine brothers i.e. those born of the same womb even though not re united, "having assembled together" i.e. even though they had gone to a different country, still returning thence and assembling together, they should share it; "Equally" i.e. not by any measure of greater or less shares. Likewise those brothers who are non uterine (but) re united, and also the uterine sisters, all these should divide (and take) equally. Having divided equally, they should take. This is the clear meaning.

Viramītrodaya

It has been stated that 'of one who has departed to heaven without issue, the successors to the property are the wife, etc., the Author mentions an exception to it

Yājñavalkya Verses 138, 139

Samsrshā, 'the re united, "He who being once separated, dwells again with his father, brother, or paternal uncle, is termed re united", thus stated by Brhaspati¹, one who has property in re union should take the property of another member re united who has died without a male issue, and not the wife etc. of the re united

Jātasya, 'of one born, i.e. one who was in the womb at the time of the death of the re united and who was born afterwards, to such a son of the re united, one should give the share i.e. the property² belonging to his father

Of one, however, with whom the uterine as well as the non uterine brother have re united, the wealth of such a one, however, the uterine re united brother alone will take and not the non uterine re united brother. Here, the reason is that although non re united, a uterine brother alone takes the property of one who has died without leaving a wife and daughter, and not, that when they are living, a non uterine brother. Moreover, the meaning is that this particular rule is based on propinquity by relationship, even though it is not particularised by a state of re union

1 See above page 1114 l 22

2 Ch XXV 72

3 नपितृसहचरिणम्

- By the expression *apī cha*, 'even moreover', the Author adds the exception to the rule established before by the text of Vasishtha viz. "When, of an unseparated brother a uterine brother exists, the wife and the rest shall not take the property." By the word *tu*, first used
- 5 the Author discriminates the right of the wife etc. to take the property, by the second use, the right of the re-united paternal uncle etc. to take the property, and by the third use, the absence of the right of the non-separated non-uterine brother to succeed to the property. By the use of the several *chas*, 'ands', the Author adds the right of the re-united even
- 10 if the wife etc. be existing, and of the uterine re-united brother alone although a non-uterine re-united brother be living, and although a re-united coparcener be living, the right to the property to be given to the son born after re-union (133-135)

Śūlapāṇi

- 15 Yājñavalkya, Verse 130
(A non-uterine re-united (brother) shall not take the property of a non-uterine (brother).
Asamasyatyapī 'even though un-reunited' a uterine brother alone shall take, not however, a re-united step-brother. Some expound the word
- 20 *samasya* 're-united,' as 'united in the uterus, i. e. a uterine brother.
In the reading 'not a non-uterine shall take the property' the meaning is that if he be a non-uterine brother, he shall not take the property. This is with the object of declaring the right of an un-re-united uterine brother. Therefore it is not open to the fault of tautology.
- 25 After re-union, if a partition takes place, the share shall be equal, as says Manu¹. "If brethren, once divided and living again together as coparceners, make a second partition, there the distribution of shares shall be equal, in such a case a deduction for the eldest does not exist."
Brhaspati² states a special rule. "If among reunited coparceners
- 30 'any one should acquire additional property through learning, valour or other such means, to him an additional share must be given, and the rest shall be equal sharers' (139)

1 Note here the difference of opinion between Śūlapāṇi and Yājñavalkya according to whom a non-reunited uterine and a re-united non-uterine brother take together. This he does by implying *et* after *re-united* (see p. 1114 f. above). While Śūlapāṇi does not imply *et* and takes the expressions excluding the non-uterine brother entirely.

² Ch. IX, 210

² Ch. XXV, 77.

[Colebrook Sect X]

[Of exclusion from inheritance]

(1) What has been said respecting the succession of the son the widow and other heirs as well as the re united parcener, the Author states an exception to that

5

Yājñavalkya, Verse 140

✕ (An ^{ent} important person, one degraded and his issue, one lame a mad man, an idiot a blind man and a person afflicted with an incurable disease, and (like¹) others, must be maintained excluding them from any share)

(2) Mitāksharā —Kibah an impotent person² i e, one of the third gender Pahtah, one degraded,³ i e a Brūhmicide or a like other Tajjah, his issue, i e one born⁴ of an outcaste Panguh lame, i e one deprived of (the use of) his feet Umattakah a mad man i e one affected by any of the various sorts of insanity proceeding from air, bile, or phlegm from delirium or from planetary influences Jadah, an idiot i e a person deprived of the internal⁵ faculty, meaning one incapable of discrimi

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15

1 Adya Colebrooke translates as well as others (similarly disqualified)

2 Whether naturally so or by castration Colebrooke citing Balam bhattacha Narada gives several varieties of impotency see Ch XIII 10-13 and Balam p 200

3 So a widow who became a mohammedan and re married was held to have forfeited her interest in the husband's property Vatta Tayaramma vs Chatahand : Suagya 41 Mad 1078 (F B)

4 i e of one who has not performed the requisite penance or expiation (Balambhattacha p 201 13)

It should be observed that each disability excepting that of being degraded is personal Each of the persons specified here is mentioned as being personally incompetent to inherit except the degraded in whose case alone it has been stated that his incompetency extends to his issue See observations at pages 282 283 in Gangu vs Chandralhogabai 32 Bom 270 See also Ram Sahye Bhakur vs Lalla Lalji Sahye 8 Cal 149 at p 152 and note

5 The distinction between a madman umattah, and an idiot Jada is nearly the same as these words convey by their import in the English language An umattah or 'a madman' is one whose intellect has become completely over powered by some external force or influence which has established absolute sway over his faculties Such a man has no interval of sanity at all, while a Jada or an idiot is not a totally insane but he is one who has become so dull in intellect, as not to be able to discriminate things which are advantageous to him from things which are of no advantage to all (See Balambhattacha p 250 14)

Insanity need not be congenital Wutkusum vs Wenummal 43 Mad 404

noting right from wrong Andhab, a blind man,¹ & e destitute of the visual organ. Achikitsyaroḡa² afflicted with an incurable disease, & e. affected by an irremediable distemper such as marasmus and the like

(3) Under the expression "Like others' Ādya, are comprised one who has entered³ into another order, an enemy⁴ to his

(1)

1 The blindness referred to here means the blindness which is congenital See Bālabhāṭṭi p 200 II 15-16 and the judgment of Westropp O J in *Morari, Golaldas vs Parents* 1 Bom 177, where the opinions of *Sāstris* recorded in West and Buhler's *Hindu Law* on the subject are examined, as also the original texts in the *Mitāksharā* and the *Mayūlās*

So deafness must be congenital *Sastryam vs Ganesh* 51 Bom 50 and it must be shown to be incurable

And dumbness if congenital will exclude *Bharmappa vs Vijayagunda* 46 Bom 455

But see *Mt Dilraj Kuari vs Rakeshwar Ram* 13 Pat 712 congenital blindness does not exclude The rule has become obsolete *Surayya vs Subbaramu* 43 Mad 4

2 *Achikitsyaroḡa*—*chikitsā* is the treatment of a disease after determining its cause &c

Leprosy which is not congenital, does not debar the vesting of the birth right and therefore when a leper is the sole surviving member of a joint family the property shall vest in him absolutely, so that on his death it will go to his heirs and not as a reverter to the heirs of the last competent holder *Mool Chand vs Chohan Den* (1937) All 825 (F B)

Leprosy, however to exclude must be of the sanious or ulcerous and not of the anæsthetic type *Karali Charam vs Ashutosh Nank* 50 Cal 604, 51 I A. 177 at pp 178-180 and must be considered to be incurable *Kayarahana vs Subbaraya* 38 Mad 200 and in *Puthaldas vs Padial* 38 Bom L R 207 it was held that non congenital leprosy does not disentitle one to be a coparcener, nor does he lose his right in the coparcenary property

3 The expression in the original is simply *Āiramāntargata*—which literally means "one who has entered into another order" An *Ārama* is a stage or period in the life of a man, and there have been laid down as four viz (1) *Brahma charya* or the celibate life—the life of a student, (2) *Gārhaṣṭhya* or *Gṛhaṣṭha* *īrama* the life a house holder, (3) *Jānap astha*, the life of an anchorite or hermit and (4) *Saṃnyāsa*, the life of absolute renunciation Mr Colebrooke translates as, 'one who has entered into an order of devotion', but in the note the expression used by him is 'another order'—and in the explanation is added—'into one of devotion' He mentions further on as orders of devotion, the *Brahmacharya*, *Jānaprastha*, and *Saṃnyāsa* It would appear, however, from the expression used by *Viṣṇu ācārāra* that the exclusion would apply as soon as a change from one order into another took place (see also Bālabhāṭṭi p 250 18)

4 *Enemy to his father*—the 'enmity to father' referred to here would appear to consist both of an active commission of an act of hostility, as well as in
(Contd on next page)

father, a sinner in an¹ inferior degree, and a person deaf, dumb or wanting in an organ. Thus, says Vasiṣṭha² "They who have entered into another order are debarred from shares" By Nārada³ also (has it been declared): "An enemy to his father, an outcaste, an impotent person, and one who is a sinner in an inferior degree take no shares of the inheritance even though they be *Aurasa*⁴ (sons) whence then (could) the *Kṣhetrajñas*" Manu⁵ likewise ordains "Impotent

5

(*Contd from last page*)

the omission of the necessary duties enjoined upon a son towards his father *Asalāya* in his commentary on this verse of Nārada (XIII 21) observes विना की दैष्टि स विवृद्धिः । द्वेषश्च विनामि मारणादिभावः । पुत्रे ननुदेशेन उद्धृष्टदिश्वत्सात् ।

Tr "He who hates his father is 'an enemy to his father' Hatred or enmity consists in the desire to kill the father or to do similar acts, as also the absence of a desire to offer oblations of water &c to him after his death "

Dr Jolly observes on this passage as follows, (Sacred Books of the East Vol XXXIII p 194 N 21)

"The Commentators are at variance as to the precise meaning of the term 'hostile to his father' Thus the *Sarasvatīhṛ̥* declares it to denote one who forgets himself so far as to say, 'He is not my father' The *Dāyabhāṣya* says it means one who beats his father According the *Jagannātha* and the *Ratnākhara* it means 'one who attempts his father's life or commits other hostile acts against him, and who fails to offer the customary funeral oblations to his father after his death " See Colebrooke's Digest V 4 320

1 *Aupapātikah* अपराधिर Colebrooke translates this word in two different ways in § 3 viz, as 'a sinner in an inferior degree' and as 'addicted to vice' The second translation has been subjected to comment at Allahabad in *Dal Singh vs Musummat Dns* 32 All 155-158 where the learned judges questioned the correctness of the reading अपराधिर itself and reference was made to Mr J O Ghose's *Hindu Law* p 230 where other readings are given अपराधिर would appear to be a better reading and has been given in the *Nārada Smṛti* edited by Dr Jolly

It should be noticed that the commentator on Nārada XIII 21 notices अपराधिर and explains it as तत्पर्यादिभिः कृतकृत्यजनः ।

2 Ch XVII 52

3 Ch XIII 21

4 Colebrooke translates—*Aurasa* as "legitimate" and *Kṣhetrajña*—"as sons of the wife by an appointed kinsman" The two terms have been explained by *Vijñānārṇya* and *Vijñānāśrama* while treating of several kinds of sons (see p 1010 &c) From a consideration of the law as stated there it would be more convenient to use the original terms rather than their English translations,

5 Ch IX 201

"persons and outcastes are excluded from a share¹, and so are persons
"born blind and deaf, as well as mad men, idiots, the dumb, and those
"who have lost an organ²"

(4) *Nirandhyāḥ*, 'those who have lost an organ'—any person,
5 from whom (the use of) an organ has disappeared on account of
disease or other cause, is said to have lost that organ

(5) These persons—the impotent and the rest—are excluded
from a share. They do not participate in the heritage. They must
be supported by an allowance of food and raiment only. And if
10 they are not maintained, the penalty of degradation is incurred. For
Manu³ says "But it is fit, that a wise man should give all of them
'food and raiment without stint, to the best of his power for he, who
'gives it not, shall be deemed an outcaste." 'Without stint' signifies
'for life'

(6) They are debarred of their shares only if their disqualification
15 arose before⁴ the division of the property, but not one who had already
been separated. (7) (And) if the defect be removed by medicaments⁵ or
other means even though at a period subsequent to partition, the right
of participation takes effect, by parity of reasoning with the rule (in
20 the text⁶) "When the sons have been separated, a son who is (after
"wards) born of a woman equal in class, shares the distribution."

1 The original is *Anamīa śvāt* 'without a share'—this may mean a share
on partition or from inheritance

2 *अन्दिम निरन्दिम*—Colebrooke translates 'those who have lost a sense
(or a limb)',—see however, I yj *ānēkara*'s explanation in the next paragraph

3 Ch IX. 202 *Bṛhaspati* observes by reference to the texts of *Dorala*
and *Baudhāyana* that although these writers except an outcaste and his offspring⁷
from those entitled to maintenance still the exception applies to those offences
only which are inexorable and not to those with reference to which expiation is
possible. See *LalanīMatsy* p. 250 II. 20 3a and p. 251 II. 1^a

4 i.e. excepting those who were disqualified for natural defects *Bṛhaspati*
p. 251 I. 2

The right of a member is only under suspense during the disability

5 See *Jaimini* VI. 1. 41 अन्दिम इदम् p. 308 अन्दिम इदम् इति

6 Yajñ II. 122 (1) See above p. 1022 II. 15 16

(8) In speaking of an outcaste and the rest, the masculine gender is not here used¹ restrictively. And hence, it must be understood, that the wife, the daughter, the mother, or any other (female), being disqualified for any of the defects which have been specified, is likewise excluded from participation.

5

Viramitrodaya

The Author mentions an exception at some places, to the right of the son, wife, and the re-united to take property.

Yājñavalkya Verse 140

By the use of the word *atha*, 'and so', is included one deaf from the time of birth. By the use of the word *adya*, 'and like others', are included the dumb, the eremical to the father and like others, vide the text of Manu². "Excluded from a share are the impotent and the degraded, and so are persons born blind and deaf, as well as mad men, idiots, the dumb, and those who have³ lost an organ, and also vide the text of Nārada⁴ viz. "An enemy of his father, an out-caste, an impotent person, and one who is a sinner in an inferior degree, these even though they be the *Aurasa* (sons) do not get a share, whence shall the *Kṣhetrajās*?"

Tappah, 'born of him', i.e. born of the degraded. *Panguh*, lame, i.e. deprived of the use of his feet. *Jadah*, 'idiot', i.e. having a weak intellectual perception. (140)

Sūlapāni

Yājñavalkya, Verse 140

Tappah 'his issue': i.e. begotten by the one degraded, *jadah*⁵ an 'idiot', a dullard, one not enthusiastic in the performance of a 'religious duty'. Andho 'blind' i.e. congenitally blind. From the text of Manu⁶ viz. 'Born deafmutes also there is no room for a dispute'.

These i.e. the impotent and the rest, should be maintained for their life time with subsistence and covering (being offered to them). They are not entitled to a share. (140)

1 अत्रापि *Atarakṣharā* i.e. has been used without any special significance. That is to say the incapacity attaches to all persons alike without regard to sex.

2 Ob IX 201

3 *Narandrayān*

4 Ob XIII 21

5 Mark the difference in the angle of vision of the Author of the *Mitākṣharā* and *Sūlapāni*. For while the *Mitākṣharā* takes a practical view of it as 'one who is incapable of discriminating right from wrong' *Sūlapāni* takes as the text of a viz the want of a desire for religious performance.

(9) The exclusion from a share of the impotent and others¹ seeming to imply the exclusion of their sons also, the Author observes thus

Yājñavalkya, Verse 141 (1)

(The Aurasa and Kṣhetraja sons, however, of these, if free from defects are entitled to allotments.)

(10) Mitākṣharā:—Eteṣhām, of these, i.e. of the impotent and others; the Aurasa or Kṣhetraja sons, nirdoṣhāḥ, if free from defects, i.e. which should bar their participation, such as impotency and the like, bhāga-bāriṇaḥ, are entitled to allotments, i.e. become rightful partakers of shares.

(11) Of these, an impotent man is likely to have a Kṣhetraja son, the others may have the Aurasa sons even. The specific mention of the Aurasa and the Kṣhetraja sons is intended to exclude² other kinds of sons.

* PAGE 100.

(12) The Author delivers a special rule concerning the daughters of the impotent and other disqualified persons

Yājñavalkya, Verse 141 (2).

(The daughters likewise, of these, must be maintained³ until they are wedded to⁴ their husbands.)

(13) Mitākṣharā:—Eṣhām, of these, i. e. of the impotent and others, Sufāḥ, the daughters, i. e. the female issue, until they are initiated by

1. i.e. the impotent and others enumerated above in II. 140 at p. 1117 II. 7-9.

2. i.e. along with their disqualified parents. Bālabhāṭṭa adds (p. 251 l. 23) "A putrikā also gets a share as being equal to an aurasa", and she too has been included in the word Aurasa" see note further on Yājñ. II. 142 and the observations of Chandavarkar J. in *Gangyā vs Chandrabhāgabai* 32 Bom. 276 at pages 282-283 and notes

3. Maintenance—includes residence, food and raiment. *Charandas vs Nagubai* 31 Bom. L. R. 1126.

4. अविवात—Colebrooke translates; "Until they are provided with husbands." The suffix ल used with the root ग् means—"join to" or "consigned to" e.g. अविवात, अविवात &c.

A married daughter will not be entitled to claim maintenance after her marriage. She must seek her maintenance from her husband's family. See *Bai Mangal vs Bai Rukhmīni* 23 Bom. 291 at p. 295

marriage, so long must they be supported. Under the suggestion of the word *cha*, "likewise," the expenses¹ of their nuptials must be also defrayed.

Śūlapāni

Yājñavalkya, Verse 141

5

Eśām, 'of these', as may be possible, *Aurasāḥ* 'the Aurasā' and the *Kṣhetraja* sons, should be made the partakers of the shares of their fathers. Their daughters also so long as they have not been given away in marriage, should be maintained (141)

(14) The Author adds a distinct rule respecting the wives of 10
 disqualified persons

Yājñavalkya, Verse 142

The sonless¹ wives likewise of these, conducting themselves aright, must be supported,² but such as are unchaste³ should be expelled and so indeed those who are perverse

15

(15) *Mitākṣharā*—*Eśām*, of these, i.e. of the impotent and others, *aputrāḥ*, the sonless wives *sādhuvṛttayah*, conducting themselves aright,

1 The original expression is *Saṁskāryāḥ* संस्कृत्याः i.e. should have the ceremonies performed with reference to them. These ceremonies have been enumerated by Yājñavalkya in *Ācatadhyaya* in verses 10-12 pp. 30-41 above, and as regards women, he adds a special rule in 13 (2) thus—"These rites (are performed) silently for women, their marriage however, (is performed) with Mantra texts." See also *Manu* II 26-30, & II 60-67 for the *Saṁskāra* for women.

2 Colebrooke Tr. "Childless," but the expression in Yājñ is अपुत्रा *Aputrā* and not अपुत्रा *Anaputrā*.

Discussing this text, among others, Chandavarkar J. has held that "the widow of a disqualified person is not excluded from inheritance merely by her husband's disqualification, whether she claims as heir to a deceased person through her husband or otherwise, if she is herself free from any of the defects which exclude from inheritance." *Ganguli vs Chandrabhagabai* 32 Bom at 275.

3 Brother-in-law is bound to maintain a deceased brother's widow. If father's self-acquired property descends to him. *Jai Nand vs Sarwat* 4 La k 401 (F. D.).

4 If she lives in adultery and persists in it, a wife is not entitled to maintenance. *Dals Saran Shukul vs Daulta* 39 All 234.

But where a wife is found to have lapsed, but to have changed her ways subsequently, she was given a starving allowance. *Satyabhim vs Asahacharya* 39 Mad 618.

- 1 c if they are correct in their conduct, *bhartavyāḥ* must be supported, or maintained *Wyabhichāriṇyaḥ* the unchaste, however, *nirwāsyāḥ*, should be expelled *pratikūlastathaiva cha*, and so indeed those who are perverse, 1 c they deserve to be expelled But they must be supported, provided they be not unchaste For, (it is) not that even a maintenance must not be given solely on account of perverseness

VĪRAMITRODAYA

- The impotent and the rest being declared to be not entitled to a share, the incapacity of their sons also may follow, as also (might follow) the non necessity for the maintenance of their daughter, wife etc The Author refutes that

Yājñavalkya Verses 141, 142

- Teshām*, Of those, 1 c of the impotent and the rest *Kṣhetrajāḥ* the 'Kṣhetraja sons, and also the *Aurasa* sons of the impotent and the rest, 15 if they are free from the defect of impotency and the like, become entitled to a share, *bhagakarṇaḥ*

- Eśāṁ*, 'Of these, 1 c of the impotent and the rest, the *Kṣhetrajāḥ*, and of others than the impotent, the daughters as long as they have not been joined to their husbands, 1 c made over to a bridegroom, so 20 long should they be 'maintained very properly 1 c similarly like one's own daughters.

- Eśāṁ*, Of these, 1 c of the impotent and the rest, *Yogitāscha*, 'the wives also, who had been married by reason of the impotency not having been determined, *Sādhanitayāḥ*, 'conducting themselves aright, 25 1 c if well behaved, then *bhartavyāḥ*, 'should be maintained

- Vyabhichāriṇyaḥ*, 'the unchaste, as also those who are extremely *pratikūla* 'perverse, *nirwāsyāḥ*, should be expelled, 1 c should be driven out of the home By the first *cha*, 'and, is added by inclusion that 'they should have the sacrament performed for them, and by the 30 second, 'those who indulge in drinking liquor, etc By the use of the word *cha*, 'also, the Author excludes the right of maintenance (141-142)

Śūtopām

Yājñavalkya, Verse 142

Their sons (wives) etc. The meaning is clear (142)

[Colebrooke Sec XI]

[On the separate property of a woman]

(1) 'After briefly propounding the division of wealth left by the

1 From here begins the law regarding 'a woman's property' The author of the Mitāksharā does not appear to be inclined to lay down any particular limit to the word *stridhana*. He has distinctly laid down further on that the term *stridhana* is to be understood according to its literal meaning and no technical significance has any scope. The introductory remarks are very significant. The author says that after having briefly described the division of wealth left by the parents, generally, and after having described the devolution of wealth of a male, the sage Yajñavalkya propounds the devolution of wealth obtained by a female. Taking this as it stands and reading it in connection with the special remarks of Vijnanesvara about the meaning of the term *stridhana* it would appear that according to him, all property acquired by a woman was to be regarded as her *stridhana*, and this would appear to be in agreement with the general sense in which that term is understood in Western India or more particularly in the Bombay Presidency. See observations of West J in *Bhagvathidas vs Kankarav* 11 Dom 285 (F B) at p 299 also *Bhaskar Trambal vs Mahadeo* 6 Dom II C B (O C J) 1 at p 18 and the observations of Candy J in *Gandhi Wajantal vs Ben Jadab* 24 Bom 192 at pp 194-206. The application of the principle of *Stare decus* to question about the *stridhana* has worked strange results. For whereas there may be good authority in Bengal and the allied provinces for the proposition that 'a woman is incapable of acquiring any property' there is equally good authority for the proposition that 'whatever a woman acquires is her *stridhana*', and at least in the Bombay Presidency not only that there would be nothing strange or new in such a proposition, but any other statement of the law would be received with surprise. By a strange combination of circumstances however the doctrine that a woman as a rule takes a limited estate is only *durante viuentis*, has come to be engrafted upon the general law of this Presidency, and this on account of the merest accident that cases first went in appeal to the Privy Council either from Bengal or Madras, the appeals from Bombay being of a comparatively later date. The Board in England had before them questions wherein the meaning and significance of passages from the *Mitāksharā* had to be discussed and the conclusions once drawn were engrafted upon decisions and cases in other parts of India without much regard to the accepted sense of the people of that particular province. It would thus appear that the principle of *Stare decus* has no application in cases of this nature inasmuch as there have been no cases as such to give scope for the application of that doctrine. The most recent instances of the strange results of this general interpretation of the texts for all the Provinces will be found in the language of the judgment of *Deri Maugol Prasad Singh vs Mahadeo Prasad Singh* 31 All 234 (P C) and *Shro Shinkar Lal vs Deri Sahai* 25 All 468 30 I A and *Shro Partab Bahadur Singh vs Allahabad Bank* 20 All 476-30 I A 209.

husband and wife (in the text¹) "The sons should divide (equally "both the assets and the debts) of the parents . . &c," the distribution of a man's goods has been described at large. The Author, now intending to explain fully the distribution of a woman's property,
5 begins by setting forth the nature of it

Yājñavalkya Verse 143

(What was given (to a woman) by the father, the mother, the husband or a brother, or² was received by her at the nuptial fire, as³ also that which was presented to her on her husband's marriage to another wife
10 or any other, is denominated (*strīdāna*) a "woman's property.")

(2) Mitākṣharā —That which *pitrāmātrapatibhāradattam*, *was given by the father, the mother, the husband as also by a brother*, as also that which was presented (to the bride) by the maternal uncles and the rest at the time of the wedding before the nuptial fire, and *ādhipedānikam*,
15 that which was presented to her on her husband's marriage to another wife, as a gratuity on account of supersession as will be subsequently explained (in the text⁴) "let him give to a wife who has been superseded &c", and as indicated by the word *ādya*, *any other*, also

1 Yajñ II 117 p 1002 II 7-8

2 i.e. other than the gifts received by her and otherwise described

3 The original is *cā* Colebrooke translates 'Or'

The *Adhipedānikam* is that land of a woman's property which is given to her as a solace for the grief of supersession by another wife. Yājñavalkya has enumerated the circumstances under which a wife could be superseded see the *Acharādhyaya* Verse 73 and 74 (pages 194-196 above) and in Verse 75 (p 199) he lays down a penalty for the supersession of an obedient wife and gives her a third of the husband's share. See for this *Vajra* II 148 and the *Mitākṣharā* thereon. See also *S. Sūtra* p 71 II 70-71

4 Yajñ II 148

5 *Ādya*—Any other. This is a very important term in the Smṛti literature inasmuch as the Smṛti writers and commentators have freely made use of it for taking on such provisions to the existing law as they thought necessary. The word *Ādya* here as in Yajñ II 140 has been utilized to introduce provisions which were not stated in the Yājñavalkya Smṛti. Another term of which similar use has been made is *cā* and it is under cover of this term that the daughter's son has been introduced by Viṣṇusvara as an heir (see above page 1067)

property which she may have acquired by inheritance,¹ purchase, partition, seizure, or finding, are denominated by Manu and the rest *strīdhana* "woman's property"

(3) (The term *Strīdhana* ('woman's property') conforms, in its import with its etymology, and is not technical: for, if² the literal sense is admissible, a technical acceptance is improper. (4) As for the enumeration of six sorts of *Strīdhana* by Manu³ viz. "What was given before the nuptial fire, what was presented in the bridal procession, what has been bestowed in token of affection⁴ or respect, and what has been received by her from her brother, her mother, or her father, are denominated the six-fold property of a woman," that is intended, not as a restriction⁵ of a greater number, but as a denial of a less)

(Contd from last page)

This term *Ādya*, which has sometimes been referred to as "the mysterious *Ādya*" has received so much attention from the courts and so copiously, that it is absolutely unnecessary to refer to any case. It is important, however, to note its derivation and significance. It is derived as *आद्य* मय आद्य. That which was produced first. When used in the Masculine gender it is used to express 'the first'. Other terms used are *पूर्व*, *पौरुष* and *पथ* (See

Derivation Amara III 1-80 and the Ramasrama thereon). It indicates that the word to which it is suffixed is the first of a series consisting of others. Its use with such a word indicates cognate ideas proceeding from such a term of *system generis*.

1 So according to Vijnanesvara wealth obtained by a woman by inheritance, &c., is her *Strīdhana*, and also that the term *Strīdhana* does not admit of any other meaning than can be deduced of its etymological import. (See Balamhastu p 263 II 15-30)

2 Of with this, the following three maxims which bear the same import

- (1) अथवापिपित्तानपित्तरेपेक्षितं सार्थकम् ।
- (2) अथवापिपित्तानपित्तरेपेक्षितं सार्थकम् ।
- (3) निमित्तमपिपित्तमपिपित्तमपिपित्तम् ।

It is opposed to the doctrine of Jimuta Vahana. See note above

3 Ch IX 104

4 "This passage is read differently by *Pitākhara* and by *Jimuta Vāhana* (IV 1 4). It is here translated conformably with Balamhastu's interpretation grounded on the subsequent text of *Ādhyāya* (further on) where two reasons of an affectionate gift are stated one simple affection the other respect shown by an observance at the woman's feet." Colebrooke

5 Otherwise, even the six kinds enumerated by Manu would be contradicted by the specific kinds enumerated by Yājñavalkya and Narada. (See Balamhastu page 263 II 20-27)

- (5) Definitions of adyadhyagni, 'presents given before the nuptial fire,' and the rest have been delivered by Kātyāyana¹, "What is given to
"a woman at the time of her marriage near the (nuptial) fire, is
"celebrated by the wise as 'women's property', *strīdhanam*, bestowed
5 "before the nuptial fire' *Adhyagni*."

"That, again, which a woman receives while she is being conducted
"from her father's house² is instanced as the property of a woman under
"the name of 'gift presented in the bridal procession' *Adhyāvahanam*."

- 10 "Whatever has been given to her through affection by her
"mother in law or by her father in law, is also³ what is received by her
"at the time of saluting the feet of the elders is denominated 'an
"affectionate' present' *Pitūdānam*."

- 15 "That which is received by a married woman, or by a maiden,
"in the house of her husband or of her father, from her brother or
"from her parents⁵ is termed *Sauvāṇyam*⁶ 'a kind gift'."

1 Verses 890-897

2 Mr Colebrooke adds a note The *R. tadāra* and *Chāntamāni* read "from the parental abode. The original expression there is नृपत्या हि देवता and it would make no difference whether it is देवता or देवता both the expressions having the force to indicate 'the abode of her father : & the parental abode.' It may be noticed that the expressions are used in contradistinction with the husband's abode" (पति). The corresponding Marathi word घर would make this quite clear, the idea being that she is being carried from the house of her birth to the new house by marriage.

Property bequeathed by the maternal grand father is her *sauvāṇya* *strīdhanam*, which she can alienate without the consent of the husband. *Venkatadri vs H. mantapada* 34 Bom L R 1144=57 Bom 85 *Uthukaraja Pillai vs Sellathammal* 3 Mad 298

3 Mr Colebrooke mentions a reading in the *Smṛti Chāndrikā*—"given to her at the time of making an obeisance at her feet" while no such reading is available either in the Sanskrit Text of the *Smṛti Chāndrikā* or the translation by Mr. Kṛishnaswamy (IX 2). The *Smṛti Chāndrikā* simply quotes the text of Kātyāyana as here and adds पादस्पर्श-दानं स्वाध्यायेन च. The *Pādāṅgaśāntam* (means)—given at the time of the salutation of the feet. And the *स्पर्श* is generally made by the newly married bride going for the first time to her husband's abode.

4 See note above. The *Smṛti Chāndrikā* and the *Īramitrodaya* follow this reading. But the *Ratnāṅga Chāntamāni*, and *Vaidi Chānta* read denominated as a question through lovelessness *Īśānyārīyam* (स्वयम्भार्या). Colebrooke

5 The Bengali reading is नृपत्या 'from her husband' instead of नृपत्या 'from her father'. See Bālabhāṭṭa p 204 ll 7-8. He notices the interpretation by the 'Fasteners' (स्पर्श) on this term and adds at the end that this is (in addition to and) different from all the property referred to above. 6 Verse 901

Sūlapāni

Yājñavalkya, Verse 143

Adhyagni, 'at the fire,' i.e. near the fire at the time of the wedding, by the father and others, *dattam*, 'was given' *Ādhyakṣam*, 'as a solace for her agony,' i.e. at the time of the second marriage, what was given to the former wife

By the use of the word *adya* 'or any other,' after *ādhyakṣam*, are included in the *śraṇṇika* and others, vide *Kātyāyana*² "that again which a woman receives while she is (being) conducted from her father's house, is called *adhyakṣam*, a kind of *śraṇṇam*" (143)

5

10

(6) Besides, (the Author says)

Yājñavalkya, Verse 144 (1).

That which has been 'given to her by her kindred', *Bandhudattam* as well as her 'fee or gratuity', *Śulka*, or anything 'bestowed after marriage' *Am ādhyakṣam*.

15

Mitākṣharā—*Bandhobhā*, by her kindred,³ i.e. by the *mātṛbandhus* as well the *pitrbandhus* of the damsel; *yad dattam* what has been given,

1 अग्निद्वारेः i.e. the pain caused to her on account of the husband marrying another wife. As for the *गृहिण* and the mutual rights and liabilities of the wife and the husband in that connection see *Āchārādhyāya* Verses X 73, 74 and 76 Text pages 18-19, and tr. pp. 194 200 above (Part I)

2 Verse 894

3 "Her kindred"—i.e. her kindred through her parents before marriage, and her kindred through her husband after marriage. These i.e.—the parents and the husband—are the *media* through whom 'her kindred' are to be determined. The kindred of a person—whether male or female—are those who are directly related to such person individually, or mediately through others who are kindred of that person. In the case of a male the three kinds of kindred or *bandhus* have been enumerated above. The case is somewhat different in the case of a female. For, (1) after marriage, her *bandhus* are those of the husband if the marriage be in an approved form. It is only when the marriage is in an unapproved form that her kindred are those in her own individual right, and these would be her children &c. and those relations connected through her parents.

(2) Before marriage, her kindred are either her father's kindred or her mother's kindred which would again mean her father's kindred alone, unless her mother's marriage was in an unapproved form. See further on under verse 145 and also the observations of Chandavarkar J. in *Janghata* vs *Jisha Appay* 32 Bom 409 at p. 413, *Talanam* vs *Ramesandra* 36 Bom 339

i.e. by these *Sūka*,¹ the gratuity or fee, that after the receipt of which a girl is given in marriage *Anvādheya*kam, what is bestowed after marriage, and, following, i.e. subsequently to the marriage, what has been *āhitam*, deposited, i.e. given.

- 5 (7) It has also been said by Kātyāyana²: "What is obtained by
"a woman from the family of her husband at a time subsequent to
"her marriage, is called an *Anvādheya* or 'gift subsequent'; and so also
"that which is similarly received from the family of her father."—is
10 termed "a woman's property:" thus is this passage connected with
that which has gone before

Vīramitrodaya

- Thus having in details stated (the law relating to) the property of a male, the Author treats of *strīdhana*, 'the woman's property', with a view to discuss the 'mother's wealth' stated before in the text³: "Of
15 "the mother's (property), the daughters (shall take) the residue after
"(the payment of) debts; in their default, the issue (succeed)."

Yājñavalkya, Verses 143, 144 (1)

- By the father and others, given through affection; *adhyagni*, 'in the presence of the fire', i.e. near the fire, at the time of marriage, what was
20 obtained from even an outsider'. *Āhnedanikam*, 'on the occasion of supersession, as may be hereafter stated in the text': 'To a superseded wife one should give' etc.

- By the *bandhus*, 'kindred, such as the maternal uncle and others, *datam*, 'given, through affection; *sūkam* i.e. wealth settled by the
25 father and others intended to be given to the bride and the bridegroom; *Anvādheya*kam, 'gifts after marriage', such as stated by Kātyāyana⁴ viz.

1 Bālabhāṭṭa (p. 254 ll. 14-15) states that according to the interpretation of *Kalpavṛkṣa*, this refers to the property of a sister married under the *Āsura* form. He also states the interpretations put by Kātyāyana and Vyāsa on the term *cha*

2 Verse 899

3 Yājñ. Verse 117 (3rd quarter) p. 1004, ll. 21-22

4 Yājñ. II. 148

5 Verse 898

"At a time subsequent to the marriage, what was obtained by a woman from the family of her husband, that is called *Anvādheya*, as also what was received from the father's family. All this kind of *śradhana* is declared as *Saudāyikam*. By the use of the word *ādya*, 'or any other' is included property transmitted upon the husband's death. By the word *cha*, 'also', are included articles put on by her such as clothes, ornaments etc. The word *eva*, 'only', excludes property which was of the husband's exclusive ownership [143, 144 (1)]

(8) 'A woman's property' has been thus described'. The Author next propounds the distribution of it

Yājñavalkya, Verse 144 (2)

(If she pass away without issue, her kinsmen should take it.)

(9) Mitāksharā —Tal, it, i.e. the woman's property described before; alitāyām, if the woman pass away, i.e. die, aprajasi without issue, i.e. without progeny, in other words leaving no daughter, nor daughter's daughter, nor daughter's son, nor son, nor son's son, bāndhavāḥ, the kinsmen, i.e. the husband and the rest, as will be (presently) mentioned avāpnayuh, should take it

Sūlapāni

Yājñavalkya Verse 144

By the father's kinsmen and the mother's kinsmen given *śūla* has been described by Kātyāyana². For the furniture in the house, the "conveyances the milch cattle, ornaments and servants whatever is obtained as the price of these, that has been declared to be known as *śūla*". *Anvādheya*, however, he has stated thus 'After the marriage, "however, what has been obtained by a woman from the family of her'

1 i.e. as above in verses Yājñ II 143 and 144 (1)

See Bai Kesarī vs Hansraj Moraj, 30 Bom 431-443 (P.C.) Janglū vs Jetla Appaj, 32 Bom 409=10 Bom L.R. 532 Bhamacharya vs Ramacharya 33 Bom 452-456

2 There is a mistake in the printing of the text on page 101. Instead of दुईद्वीहिवीविवीव &c read दुईद्वीहिवीविवीविवीविवीविवीविवीव

3 Verse 899

4 मनुस्मृत्य, P'yāśāśara reads मनुस्मृत्य. Other readings are विदुस्मृत्य and मनुस्मृत्य and the Smṛtiśāśarā reads 'मनु' विदुस्मृत्य सवासादा मनुष्ये इ नृ पृथु

"mother, that has been declared as *Anvādheya* as also that which was obtained from the father's family "

- This property as also the property of a woman married under the *Āsura* and the like form, who has died without a child such property of her as was given by the kinsmen and others, her relations : e the brothers shall take. As says *Gautama*¹ ' The sisters *śulka* goes to the "uterine brother after the mothers, some hold, even before" ' After the mother's e after her death When the mother and the father, however, are living, then it goes to these only, vide *Manu*² 'That property of hers as may have been given to her in marriages like the *Āsura* and the "rest, upon her death without progeny, such property is intended to be "for the mother and the father" (144)

- (10) The kinsmen have been declared generally³ to be competent to succeed to a woman's property The Author now distinguishes different claimants according to the diversity of the marriage ceremonies

Yājñavalkya, Verse 145

- (The property of a childless woman, married according to any of the four⁴ forms such as the *Brāhma* and the others, goes to her husband; it will go to her daughters if she leave progeny; and in other⁵ forms of marriage, it goes to her parents)

(11) *Mitāksharâ*:—*Aprajasah striyāḥ*, of a childless woman, as before⁶ stated, and who had obtained⁷ the status of a wife by any of the four

1 Ch XXVIII 23-24

2 Ch IX 107

3 See *Janglabaḥ vs Jata Appaḥ*, 32 Bom at p 414

4 i e according to the first four forms which are considered as the 'approved forms' of marriage, viz the *Brāhma*, *Dāsa*, *Āśva*, and *Prājāpatya* See *Mitāksharâ* further on

5 i e the last four forms called the unapproved forms viz the *Āsura*, *Gāndhāra*, *Rākāṣa* and *Paśūcha*

6 i e in *Yājñ* II 144 i e without any of the five descendants mentioned above *Bajantbhāṭṭi* p 206

7 *Bhāṣya* *prāptāyāḥ* (प्राप्तं प्राप्य) Literally "who has obtained wife-hood" Colebrooke translates—"who had become a wife"

modes of marriage denominated *Brâhma*, *Daiva*, *Āraha* and *Pitṛyapaṭya*, (and) who has died, *dhanam*, the property,¹ as before described devolves² in the first place *bhartur*, on her husband. On failure of him, it devolves on the *sapindas*³ nearest to him. But Śeṣheṣhu, in other forms,⁴ of marriage i. e. (those denominated), the *Āsura*, *Gāndharia*, *Ritśasa* and *Puścalat*, tat, it, i e, the property of a childless woman *pitrgāmi*, goes to her parents. The words *Mātā* (mother) and *Pitā* (father) when combined make up the compound *pitarau* (both parents). That which goes to these two is *pitrgāmi*. Although the mother has

1 i e the whole property (Balambhatta p 256 l 22)

2 *Bharturīkṣatā* (पुत्रवति) Lit "becomes the husband's (property)"

Stridhana—succession where it was held that marriage in the *Aura* form was well recognised in a community in the sense that it was 'approved,' the husband's heirs were held entitled to the *Stridhana*. *Asken Den vs Shev Paltan* 48 All 126 and in this case the court held (p 135) that where a particular form was not regarded with disapprobation, the other side must prove that it was not of the approved kind

To the *stridhana* property of a woman a son by adoption along with another co wife, and a son born of another wife succeed equally as husband's *Sapindas*. *Gangadhar Bogla vs Haralal* 43 Oud 944

The *stridhana* of a remarried girl goes equally to the son of her first husband and by the second husband. *Bapu vs Kashinath* 36 Bom L R 140

Under the V *Mayukha* the non technical *stridhana* goes to a son in preference to a son's son. *Bai Raman vs Jagjivandas* 19 Bom L R 629—41 Bom 618. As between a legitimate son and an illegitimate daughter born in prostitution the son is entitled to succeed. *Misraiah vs Hummadi* 38 Mad 1144

3 Colebrooke translates, "It goes to his nearest kinsmen (*Sapindas*) allied by funeral oblations." This definition or description of a *Sapinda* may be correct under the law in Bengal. The *Mitākshara* understands that term quite differently (See Yajñ I 52 pages 150–151 and *Lalubhai vs Manikowaria* 2 Bom 388 at p 423. See also Telang J in *Gujabai's case* in 17 Bom 114 at p 117 and *Parmappa vs Shiddappa* 30 Bom 607—8 Bom L R 685. See also note 1 on page 1071 above.) This translation therefore of the term *sapinda* is not good so far as the *Mitākshara* is concerned and has been criticised in several cases the most recent of which is *Nansa Pillai vs Sivabagathachari* 36 Mad 116 and cases cited there. As regards the succession of the husband's *sapindas* see *Arishnabas vs Shripati* 30 Bom 333—8 Bom L R 12. *Bai Asarbai vs Hunraj Morari* 30 Bom 431 (p c) at p 443. And generally also *Jangluai vs Jetha Appaji* 32 Bom 409 at pp 412 413 and *Tularam vs Narayan* 36 Bom 339 at p 345 (F. B.)

4 i e the remaining four called the unapproved,

already been indicated in the elliptical¹ compound, still her prior (right of) succession has already been² specifically mentioned before. On failure of them the (right of) succession is that of their³ nearest relations⁴ by propinquity.

- 5 (12) Indeed in all forms⁵ of marriage, if the woman be *prastûā*,
 leave progeny, i.e. if she leave issue, tat, it, i.e. her
 property, duktam, will go to her daughters. Here
 by the term 'daughters', 'daughter's daughters'
 are⁶ expressed, since the daughters themselves have been expressly
 10 mentioned in the (preceding⁷) text. 'Of the mother's (property) the
 "daughters (shall take) the residue &c." (13) Hence also, upon the
 death of a mother, the daughters first take the mother's property⁸.
 And there also, in the case of a competition between the married and
 15 the unmarried (the unmarried (take)). But on failure of these, the
 married (take). And there also, in the case of a competition between
 such as are endowed⁹ and those who are unendowed the unendowed

1 Called the *Elaishe* uni residual *Danda*. In this compound only one word is retained and the others are dropped, the one word remaining having the capacity to express the others dropped. See note 3 on p. 1001.

2 i.e. p. 1001 l. 3.

3 Their, i.e. of the parents. See note 3 above on page 11.9. For a fuller discussion on the meaning of the pronoun *ya* see *Tularam vs Varayan* 35 Bom 339 (F B).

4 *Tatpratyakṣa* *utāram*—*Pratyakṣam* are those relations whose claim is based on propinquity. Colebrooke translates 'their next of kin'.

5 *Sarvāheta*—i.e. as regards the right of succession of the issue, they take precedence in all cases irrespective of the particular form of marriage. But the issue or progeny here means her own i.e. and not the issue of a co-wife. The particular case of the succession of the daughter of a co-wife of a superior class would not otherwise have been specially mentioned. See also *Bhāmacharya vs Venkayacharya* 35 Bom 402, where the husband was allowed preference over a step-son. *Bhāmabhatta* notes several readings. See p. 207.

6 *Lakṣya*—*pratyakṣa* are expressly signified and not merely to be inferred.

7 Of *Yājñavalkya* II 117. See p. 1001 l. 21-22.

8 *Mātrikāmatr* i.e. the *Stridhana* of the mother.

9 *Prastūṣṭā*—i.e. well established in life well provided for. Comparative poverty is the only criterion in cases of competition between the married daughters and it is not intended that an inquiry should be held going into all the

(Contd. on next page)

take (the succession first); and on failure of them, those who are endowed. As says Gautama¹ "The *Sirīdhana* property goes to the "Daughters unmarried," and (failing them) to the unendowed." Here the use of the particle *cha*, and, makes it devolve on the endowed also. "Unendowed" are such as are without issue or are destitute of wealth.

Exception *Sūlla* (14) But this (rule holds) with the exception of the *Sūlla*. For the *Sūlla* goes to the uterine brethren only. *Vide* the text of Gautama² "The sister's *Sūlla* belongs to the uterine brothers, after (the death of) the mother."³

(Contd. from last page)

minute details of income &c. See Ranade J. in *Totius vs. Bessus* 23 Bom. 225. "When, however, the difference in wealth is marked the law requires that the whole of the property should go to the poorest daughter." *Ibid.*, and also cited on pages 252 and 253 of the report. The Unendowed are explained further on as being those who are without issue or are destitute of wealth.

In *Dayara vs. Partesa* 36 Bom. L. R. 118 it was held in the case of a male that a posthumous daughter was entitled to succeed.

1 Ch. XXVIII 22

2 The unmarried excludes the married. *Shoo Gound vs. Pam Adam*, 6 Luck. 162.

3 Ch. XXVIII 23, 24

4 *Sūlla*—Colebrooke translates this as "the fee or gratuity." This is in accordance with the explanation given in *Kalpataṛu* and quoted by Balambhatta on (p. 254-14), अग्नयिर्विवाहोदयः सग्नया धनम्. Tr. "The property of a sister married according to the *Āura* or similar forms of marriage" : i. e. the bride price. To the same effect is Haradatta on Gautama's text. Balambhatta notices two other definitions or descriptions of this kind of *Sirīdhana*, viz. those given by Katyāyana and Vyāsa. —*Ādhyāyana* defines it as

यदापरस्वाम्यं दौलतमणवमणम् । इत्थं तच्च नृ पदेविचिचुल्लं तदधिकीरितम् ॥

Tr. "Whatever is obtained as the equivalent of household utensils, of beasts of burden, of milk cattle or ornaments, is declared (to be) *sūlla*, and this has also been cited in the *Vyavahara-Mayukha* and *Dayabhaga* IV 3 19-20.

Vyāsa defines it as यत्कन्यं भद्रं दत्तं शुकं तदधिकीरितम् and Balambhatta explains it as भद्रं दत्तं यत्कन्यं काचादि यत्नं तदिदम् : i. e. presents &c. given to induce her to go to her husband's house, and thus it is very much like the *Adhyāyana*. See *Dayabhaga* IV 1 6.

5 This interpretation is according to that given in *Sabodhan* (p. 77 i 5) Balambhatta (p. 257 i 22) and *Kalpataṛu* explain it similarly, and so also Haradatta. The *Dayabhaga*, however, interprets it differently. According to

(Contd. on next page)

(15) On failure of all the daughters, the daughters' daughters take under this text¹: 'It will go to the daughters if she leave progeny, &c'

(16) If there be a multitude² of these (and if they be) children of different mothers, and unequal in number, shares should be allotted to them through³ their mothers, as directed by Gautama⁴: "Or, according to the mothers,⁵ let the special share (be adjusted) in each class"

(17) If there be daughters as well as daughters' daughters simultaneously⁶, a trifle only should be given to the daughters' daughters As has been directed by Manu⁷ "Such of the daughters of those (daughters) as may exist, even to those, something⁸ should be given, as may be fit, from the property of the grand mother, on the score of affection"

(18) On failure also of the daughters' daughters, the daughters' sons are entitled to the succession As says Nārada⁹ " (Let) daughters (divide) their mother's (wealth),

(Could from last page)

the Dayabhāga, first the uterine brothers &c—and then after them, and in their absence, the mother and then the father &c take (see IV 27-29) Balambhatta explains 'Mother' here, to be the woman herself : : the sister herself (See Balambhatta p 707 l 23) 1 : : Yājñ II 145 (3rd quarter)

2 Samādāya (समादाय)—is a collecting together of persons with conflicting claims

3 The principle of the rule enumerated here is the same as laid down in regard to the property of a man, where several persons lay claim through their respective male ascendants : : that laid down in Yājñ II 120 (p 1017 ll 23-24)

4 Ch XXVIII 15

5 : : the share of a particular claimant is to be determined by regard to the number of her mother's sisters as well as that of her sisters, in other words *per stirpes* first and then *per capita*

6 Here the word Samādāya does not predicate any claim on behalf of the daughters' daughters It only indicates their co-existence along with the daughters

7 Ch IV 193

8 Something, *किञ्चित्*—Kulluka holds that the grand-daughters should be unmarried Sarvajña Ācāryana says, 'When the married daughters are dead their daughters shall be presented at will by their maternal uncles with the share which their mothers would have received as a token of respect' Jāghavananda too thinks that 'on the score of affection' means 'at the pleasure (of the heirs)' But Aśvina deduces from the same term the absolute necessity of the gift Böhler.

9 Ch XIII 2

"or, on failure of daughters, their (male) issue." For, the pronoun *it*,² refers to the continuous term 'daughters'.

(19) If there be no daughters³ sons, sons take (the property); for it has already been declared⁴: "In their default, the Sons (male) issue (succeed)." *Manu*⁵ likewise shows the right of daughters as well as of sons to the mother's effects: "But, when the mother is dead, all the uterine brothers shall equally divide the mother's property, and also the uterine sisters." (20) The maternal estate, all the uterine brothers should divide equally, and also the uterine sisters should divide equally: such is the construction. And the meaning is not that 'uterine brothers and sisters share together', for since the abridged⁶ form of the conjunctive compound has not been employed, reciprocation⁷ cannot be (construed to have been) indicated;

1. सन्तान—The *Smṛtyachandrikā* interprets this as 'the female issue' स्त्रीसन्तानं. धनसन्तानस्त्वयं इति च शब्दे (See p 286 l 2) Colebrooke translates as "(male) issue".

2. See Bālabhāṭṭi p 258. The result as to the order of succession, on account of this note of the Mitākṣharā is as follows —

"After the mother, her daughters take the *strīdhana*, in the absence of the daughters, from those among her issue, the daughter's daughter take first, then the daughter's son, &c

Jamūta Vāhana seems to have understood the pronoun *it* as referring to the word "mother". See Dīyabhāga IV 2-13

3. Colebrooke translates "If there be no grandsons in the female line"

4. Yājñ II 117. (p 1030 l 20 above) See Bhāmacharya vs Ramacharya 33 Bom 452 at p 456.

5. Ch IX 192. The *Anupatara* reads *Sarva putrāṇ sahodarāṇ* (See Bālabhāṭṭi p 259 l 18)

6. *Sambhūya*—s together at a time. The meaning is that the two sets of heirs viz, the uterine sisters and uterine brothers, do not take together, but that each set takes separately

7. See notes on p 1091, 1092 (*supra*) as regards the several meanings of *cha* and the characteristics of an *Ekāśeṣa* compound

8. If reciprocation were meant to be indicated in the text of *Manu*, the word *Bhrātṛ* 'brother' would have been used inflected, however, in the dual number to denote 'brother and sister' (*Pāṇini* I 2-88), or else 'children' or some generic term, would have been employed in the plural (*Pāṇini* I 2-64) But the text is not so expressed, consequently reciprocation is not indicated. See *Sabodhini* p 77 ll 19-25, Bālabhāṭṭa

the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yayñadatta also." (21) "Equally" is specified to forbid the allotment of deductions

5 'Uterine' is used (with a view) to exclude the non uterine³

(22) The *Strīdhana* of a childless woman belonging to an inferior tribe, however, the daughter of a co wife⁴ of a superior tribe takes
Step-daughter though springing from a different mother

1 * PAGE 102

On failure of her, her issue (shall succeed). Vide Manu⁶ "What-
10 "ever property of a woman may exist, such as had been in any
"manner given to her by her father, let the daughter of a Brīhmani
"co wife take, or let it belong to her offspring" (23) The mention
of a Brīhmani includes by implication (the daughter belonging to) any
superior class. Hence the daughter of a Kshatriy⁷ co-wife takes the
15 goods of a childless Vaisya co-wife

1 As has been laid down in the law regarding the property of a male & g
See Yajñ II 114 p 991 I 10 supra

2—3 Colebrooke translates—whole blood. The expression in the text is *sodara*—belonging to the same uterus. The expression used by Vijnanesvara in this same passage is *Bhānodara*—which has been translated as non-uterine. Colebrooke translates as half-blood which is not sufficient (See note p 1098 supra).

4 This is in accordance with those provisions under which intermarriages among several *varnas* appear to have been in force. See I dṛṣṭar alāya Ācharādhyaya Verses 57 (p 168) 88 p 236, 90 (p 241) and Vyavahara Verse 120 p 1033

5 This word is derived as follows समर एक पतिवत्ता सा स्वपत्नी—She whose husband is equal : & the same (as the other) is a co wife. The form is based on the rule निव सप्तम्यश्चि (Panini IV 1 35) "In forming the feminine with the affix णी the word पति always takes the substitute व in the words like स्वपत्नी and the like & g पतिवत्ता, वसपत्नी &c. Colebrooke translates as 'a rival wife'.

6 Ch IX 198 'Her offspring' or 'issue' (Colebrooke) *Apatya* (अपत्य)—here refers to the daughters alone. See *Sarvagña sārāgnya*. Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughter of a *Brāhmana* wife, and in her absence to her offspring : & the female offspring.

7 This inference is contested by Śrīkṛṣṇa in his commentary on the *Dāya-Bhāga* of Jaimini-*Vāhmana*. Colebrooke

(24) On failure of sons, grandsons inherit their paternal grand-
mother's wealth For Gautama¹ says 'They, who

Sons' sons

"share the inheritance, must pay the debts" and

the grandsons are bound to discharge the debts of their paternal
grand-mother, for the text² expresses 'Debts must be paid by sons
"and sons' sons"

5

(25) On failure of grandsons also the husband and other relatives
Husband and others above mentioned³ are successors to the wealth

Vīramitrodaya

Thus by discussing the *stridhana*, has been discussed the mother's
property Of a woman who had no issue born, or of one all of whose
sons and daughters are dead, there being an absence of motherhood,
which is the counterpart of a living (child), who shall take the pro-
perty? So the Author says

10

Yājñavalkya, Verses 144 (2) 145

15

Aprajayām, (when) 'without issue, : e without a living daughter
and son or any of them, *atitayām*, (when) 'she passes away', *tat*, 'that
: c, the *stridhana*, *bāndhavaśch*, 'the kinsmen, : e, her relations, *atāp-
nuyuh* 'shall get.

Here, moreover, this is the special rule in the case of a woman
married according to the (four forms) *Brāhma*, *Datta*, *Āśva* and *Prājā-
patya*, the *stridhana* of a childless woman goes to the husband In the
case of the remaining four forms of marriages—by the use of the word *apī*,
'even, even when there is no marriage—her property goes to the father.
If, however, she be offered in marriage and is devoid of a son or a
daughter, then that property becomes of the daughters as their own.
In their absence, moreover, the daughter's son, mentioned before by the
word 'issue, becomes entitled to the property, as under the text of Manu

20

25

1 Ch XII 40 Cf Yajñ II 51 p 790 ante

2 See Yajñ II 50 p 792 l 7 *Supra* The two texts run thus

(1) The sons and grandsons should pay off the debts &c

(2) Those who take the inheritance must pay the debts From these

an inference follows that the sons and grandsons take the inheritance
(See *Śāstrīya* p 77 ll 30-31 and *Balamhātta* p 260 ll 14-15) For such an
inference however one more premise is wanting viz those who pay the debts,
take the inheritance

3 : e in Yajñ II 144

the (conjunctive) particle *cha* can even be construed to have been used with reference to the person making the partition. As in the example, "Let Devadatta practise agriculture, and Yajñadatta also." (21) "Equally" is specified to forbid the allotment of deductions.

5 "Uterine" is used (with a view) to exclude the non-uterine.¹

(22) The *Strīdhana* of a childless woman belonging to an inferior tribe, however, the daughter of a co-wife² of a superior tribe takes Step-daughter. though springing from a different mother.

3 * PAGE 102.

10 On failure of her, her issue (shall succeed). *Vide Manu*: "Whatever property of a woman may exist, such as had been in any manner given to her by her father, let the daughter of a Brāhmaṇi co-wife take; or let it belong to her offspring." (23) The mention of a Brāhmaṇi includes by implication (the daughter belonging to) any superior class. Hence the daughter of a Kṣatriyā³ co-wife takes the goods of a childless Vaiśyā co-wife.

15

1. As has been laid down in the law regarding the property of a male *s. g.* See Yājñ. II. 114 p. 994 l. 10 *supra*.

2—3. Colebrooke translates—whole blood. The expression in the text is *sutera*—belonging to the same uterus. The expression used by Viṣṇuśeṣvara in this same passage is *dhinnutera*—which has been translated as non-uterine. Colebrooke translates as half-blood which is not sufficient. (See note p. 1098 *supra*.)

4. This is in accordance with those provisions under which intermarriages among several *carpas* appear to have been in force. See Yājñavalkya Āchārādhyāya Verses 67 (p. 108); 88 p. 236; 90 (p. 241) and Vyavahāra Verse 125 p. 1033.

5. This word is derived as follows: सप्तः एकः पतिर्वसुः सा सप्तनी—She whose husband is equal *i. e.* the same (as the other) is a co-wife. The form is based on the rule *सप्त सप्तनी* (Pāṇini IV. 1. 35): "In forming the feminine with the affix *नी*, the word *सप्त* always takes the substitute *नी* in the words like *सप्तनी* and the like *s. g.* *सप्तनी*, *सप्तनी* &c. Colebrooke translates as 'a rival wife.'

6. CL. IX. 108. 'Her offspring' or 'issue' (Colebrooke). *Apatyā* (पत्य) here refers to the daughters alone. See *Sarjñānārāyaṇa*. Most of the commentators on Manu agree that the property does not go to the brothers of the wife concerned. It goes in the first place to the daughter of a Brāhmaṇi wife, and in her absence to her offspring *i. e.* the female offspring.

7. This inference is contested by Śrīkṛṣṇa in his commentary on the *Dāya*. *Dāya* of Jimāta—Yājñ. Colebrooke.

(24) On failure of sons, grandsons inherit their paternal-grand-

Sons' sons mother's wealth. For Gautama¹ says: "They, who
"share the inheritance, must pay the debts:" and

the grandsons are bound to discharge the debts of their paternal
grand-mother; for the text² expresses: "Debts must be paid by sons
"and sons' sons."

(25) On failure of grandsons also, the husband and other relatives
Husband and others above mentioned³ are successors to the wealth.

Vīramītrodaya

Thus by discussing the *stridhana*, has been discussed the mother's
property. Of a woman who had no issue born, or of one all of whose
sons and daughters are dead, there being an absence of motherhood,
which is the counterpart of a living (child), who shall take the pro-
perty? So the Author says:

Yājñavalkya, Verses 144 (2), 145

Aprajāyam, (when) 'without issue', i. e. without a living daughter
and son or any of them, *atitāyam*, (when) 'she passes away', i. e., that
i. e., the *stridhana*, *bāndhavadh*, 'the kinsmen', i. e., her relations, *atāp-*
nuyah 'shall get'.

Here, moreover, this is the special rule: in the case of a woman
married according to the (four forms) *Brāhma*, *Dana*, *Ārsha* and *Prājā-*
palya, the *stridhana* of a childless woman, goes to the husband. In the
case of the remaining four forms of marriages—by the use of the word *api*,
'even', even when there is no marriage—her property goes to the father.
If, however, she be offered in marriage and is devoid of a son or a
daughter, then that property becomes of the daughters as their own.
In their absence, moreover, the daughter's son, mentioned before by the
word 'issue', becomes entitled to the property, as under the text of *Manu*

1. Ch. XII. 40 Cf. Yājñ. II. 51 p. 795 ante.

2. See Yājñ. II. 50 p. 792 l. 7 *Supra*. The two texts run thus

(1) The sons and grandsons should pay off the debts &c.

(2) Those who take the inheritance, must pay the debts. From these
an inference follows that the sons and grandsons take the inheritance.
(See *Saṁhitā* p. 77 ll. 30-31 and *Bhāṣmī* p. 200 ll. 14-15). For each an
inference, however, one more particle is wanting viz. those who pay the debts,
take the inheritance

3. i. e. in Yājñ. II. 146.

stated above even when the daughter is living some portion is indicated for the daughter's son.

- Here in the case of the *Brāhma*, *Daiya*, *Arsha* and *Prājāpatya* forms of marriages the property "which a woman dying without issue
5 "leaves, that is intended for the husband only, by this text of Manu¹ it should be noted that in the case of a *Gandharva* marriage the share of the husband and the father is equal. (144, 145)

Sūlapāni

Yājñavalkya, Verse 145

- 10 In the case of marriages like the *Brāhma* and the rest, the property of a childless woman, goes to the husband. If, however, there be daughters born of her, then (it goes) to them. In the case of the remaining i. e., the *Asura* and the other forms, it belongs to the mother and the father alone.

- The right of the mother's sister and the rest to the property in the
15 absence of the husband and the rest, has been stated by Bṛhaspati.²
"The mother's sister, the wife of the maternal uncle, the wife of the paternal uncle, father's sister, the mother in law, and the wife of an elder
"brother—all these have been declared to be like mothers. When of these
"an *aurasa* son does not exist, or a daughter's son either, or their son also,
20 "then the sister's son and the rest³ shall take their property." (145)

(26) On the occasion⁴ of treating of *Strīdhana*, the Author adds something concerning a betrothed maiden.

Yājñavalkya, Verse 146 (1)

- He who after having given his daughter, takes her⁵ (back), shall be
25 punished⁶ and should also (be compelled to) make good the expenses together with interest.

¹ Oh IX 106

² Oh XXV 88-89

³ These words include other relations of the husband or father See 33I. A. 176 at p 197. These do not necessarily take in the order of enumeration, 'The question of priority is determined by the rule of propinquity—per Chandrasekh J in *Hanway vs Das Moghul* 7 Bom L R 622/631, 73 I A 176. The Madras High Court has ruled that this text has no application to the right of succession to a maiden's property. *Sundaram vs Pamasani* 43 Mad 32, at p 36

⁴ i. e. as having a reference to the subject under discussion &c

⁵ Colebrooke translates, "For detaining a damsel after affiancing her" &c
⁶ *datā* = having given or offered, and *haran* = "taking back."

⁶ *Dandya*—i. e. is liable to a penalty, which may be in the form of a fine, imprisonment, or any other form of punishment. Colebrooke translates "should be fined"

(27) Mitāksharâ —Kanyâm datwâ, a damsel verbally, having given, apaharan one who takes her (back), shall be punished by the king, by regard to the amount of the property or the magnitude of the offence, and similar other circumstances This, moreover, (is applicable) if there be no (sufficient) reason for the retraction But, if there be good cause, he shall not be punished since retraction is authorized in such a case (by the text¹). "A damsel, although given, one may even take back, if a better bridegroom presents himself" 5

(28) Whatever has been expended, on account of the espousal by the (intended) bridegroom for the gratification² of his own or the damsel's relations must be repaid in full, with interest, by the affiancer³ to the bridegroom 10

(29) Should a damsel, anyhow⁴ affianced, die before the completion of the (marriage) ceremony, what is to be done in that case? So the Author replies

Yājñavalkya, Verse 146 (2) 15

If she die (after troth plighted) the bridegroom should take back the gifts which he had presented, after deducting the expenses on both sides.

(30) Mitāksharâ —If a betrothed damsel die, then, whatever had been previously given by the bridegroom such as a ring and similar other presents, the bridegroom shall take back parisodhyebhayavyayam, deducting the expenses on both sides, the expenses of both i.e. of himself and of the person who offered the bride, parisodhya, after deducting, i.e. taking⁵ account of that, the balance (thus remaining) he may take 20

What, however, was given to the damsel by the maternal grandfather, or other relation,⁶ such as the head ornament and other gifts, 25

1 Yājñavalkya I 166 p 184

2 Upachārārthan (अपचारात्) i.e. by way of offering hospitality to

3 i.e. the parent or guardian of the bride

4 i.e. still or by proper religious rites, or by taking by lands, or in any other manner (See Balambratja p 270 l 16)

5 I gnanayya Balambratja considers this as a bad reading He prefers Kigamayya "removing" or "discharging" (p 270 ll 19-20)

6 Such as the paternal uncle Balambratja.

as well as property inherited by her in her right of succession, (all that) her uterine brothers shall take. For Baudhāyana¹ says : "The wealth of a deceased damsel, let the uterine brethren themselves take. On failure of them it shall belong to the mother ; and in her absence, to the father."

Viramitrodaya

On the occasion of (treating of) the stridhana, the Author mentions the disposal of property taken by the father and others for the marriage of a woman in the *Āsura* form who was promised by word of mouth

Yājñavalkya, Verse 146

Kanyām, 'a maiden', having by a word of mouth, *datvā*, 'promised to give', *haran*, 'one taking her back' i. e. does not give to him, such a one *dandyaḥ*, 'should be punished' by the King, by regard to the amount (invested) and other circumstances. *Vyayam*, 'expenses', i. e., the amount of money spent by the bridegroom for the purpose of the marriage. *Sodayam*, 'together with interest', *dadyāt* 'should give.'

The person giving the promise by word in the case of the death of the maiden under a misfortune, after having corrected for the expenses of both i. e., of oneself and of the bride's father and others, such a one i. e. the bridegroom may take back what was given by himself such as clothes, ornaments, gold etc., not however interest. By mentioning correction, it has been pointed out that where there is an absence of an excess over what was spent by the bride's father, nothing should be taken. By the use of the word *cha*, 'also', is intended the simultaneity of the expenses, gift, and the penalty. (146).

1. Appendix B. 7 p 125 (Leipzig Edition 1884)

"This is a special solitary text which has necessarily to be supplemented by other texts such as those quoted in *Dāyākrama* (D K S II 1-2), or from the general law of *Stridhana*, and where this law also fails, from the still more general law of succession (*Mitākṣharā* II 11-13-25) The special rules of *Stridhana* succession have thus to be expressly or impliedly supplemented from *Paṭhinaśi* or *Nārada* (*Viramitrodaya* 241)" per Jenkins O J in *Gandhi Maganlal vs Bai Jadao* 24 Bom. 192 at pp 211-212 (T B.) See also the observations of Chandavarkar J. in *Janglaba vs Jetha Appaji* 32 Bom. 409 at pp. 411-412.

Sûlapāni

Yājñavalkya, Verse 146

He who by a word of mouth, *Kanyām detiâ*, after 'having given his daughter,' *karan* 'takes her back,' without a cause, becomes *dandya* 'liable to be punished'

5

Whatever had been given by the bridegroom such as gold etc., that the father of the bride shall pay back with interest

When a maiden who by a word of mouth has been promised to be given, whatever was respectfully given by way of customary presents to the relations of the father and the relations of the bridegroom, after deducting both these whatever may remain as the residue of the *Sulka*, all that, the bridegroom may take (146)

10

(31) It has been declared, that the property of a woman dying without issue, goes to her husband. The Author now shows that, in certain circumstances, a husband is allowed to take his wife's goods in her lifetime, and even though she have issue

15

Yājñavalkya, Verse 147

A husband is not liable¹ to make good the property of his wife (when it was) taken² by him in a famine, or for (the performance of) a religious duty, or during illness, or while under restraint

20

(32) *Mitāksharâ* — *Durbhikshe in a famine*, for the maintenance and preservation of the family *Dharmakâr्ये for a religious duty*, which must necessarily be performed, and also *vyâdhan during illness* or *sampratirodhake, while under restraint* or confinement in prison or under corporal penalties, being destitute of other funds, and therefore taking his wife's property, *bhartâ na [punar] dātumarhati the husband is not liable to repay*. But if he seize in any other manner, he must pay

25

(33) With the exception of the husband, the property of a woman must not be taken in her life time by any other kinsman or heir since

1 See Balambhatta (p. 270 l. 29) There is no obligatory rule of the law that he must necessarily pay (back). Otherwise it would have been said "he should not pay" अन्वयेनैव हि विवर्तिता भवति । अथवा नैवैवैव भवति ।

2 सूत्र II 148 Taking means taking and using. Therefore, when property is not used, it should be returned. *Lammalner vs. Thayarammal* 50 Mad. 911

punishment is denounced¹ (against such conduct) " Their kinsmen,
" who take their goods in their life-time, a virtuous king should chastise
" by inflicting the punishment of theft " Similarly, it is pronounced
an offence ² " Such ornaments, as are worn by women during the
5 " life time of their husband the heirs of the husband shall not³ divide
" among themselves, they who do so are degraded from their tribe "

Vīramitrodaya

The heir to the *stridhana* of a deceased woman has been discussed
before The Author mentions who may take her property during
10 (her) life time

Yājñavalkya Verse 147

Sampratirodhake, 'while under restraint', such as when he is under
imprisonment or the like By the use of the word *cha*, 'and', is added
the general qualitative condition viz when the husband's property does
15 not exist The rest is easily intelligible (147)

Sūlapāni

Yājñavalkya, Verse 147

Sampratirodhake 'while under restraint,' the meaning is, what was
taken by one of a higher varṇa causing obstruction for meals etc (147)

20 PAGE 103*

(34) A present made on her husband's marriage to another wife
has been mentioned as a kind of *Stridhana*. The Author describes
such a present

Yājñavalkya, Verse 148

25 To a superseded wife, let him give an equal sum for the supersession;
(1 e) to her to whom no (*Stridhana*) separate property has been given, but
if any have been assigned, let him allot³ a half

1 Balambhatta ascribes this text to *Nārada* but it is not found in the
published edition of that writer by Dr Jolly The text is found however, in
Manu at Ch VIII 29 See the observations of Medhatithi on this verse The
Chauradanda (चौरदण्ड) or "punishment of theft" referred to here has been given
later on by *Manu* at Ch VIII 334

2 *Dosh*—a dereliction, a transgression *Manu* Ch IX 200

3 *प्राप्तव्यम्* is a better reading, the reading *प्राप्तित्वम्* adopted in the print is
not good Balambhatta characterises it as a bad reading (अवयव) and rightly
That would necessarily require it to be in the neuter gender

(35) Mitākṣharā:—She over¹ the marriage of whom (another) marriage is contracted is a *superseded*, *adhivinnā*. Such a one who is a wife is a 'superseded wife'. To her *adhivannastriyai*, i. e. to a *superseded wife*, *ādhivedanikam*, for the supersession, i. e. on account of the supersession. An amount *samam*, equal, to what is expended on the second marriage; to such an extent, should be given; *yasyai strīdhanam na dattam*, to her (i. e.) to whom no separate property has been given, by her husband or by her father-in-law. But if *datte*, any *strīdhana* had been assigned, *ardham*, half, the sum expended on the second marriage should be given. Here, however, the word 'half' (*ardha*) does not intend an² exact moiety. So much therefore should be paid as will make the wealth already conferred on her equal to the prescribed amount of compensation. Such is the meaning.

Vīramitrodaya

The Author expounds the *Ādhivedanika strīdhana* mentioned before

Yājñavalkya, Verse 148

Adhivinnā, 'superseded', i. e., a woman over whom a co-wife has been brought in, to such a one *Ādhivedanikam*, 'pertaining to supersession', i. e., on account of marriage with a co-wife, *dhanam*, 'wealth, equal to the property given to the one who is being married, should be given to the (former) wife to whom *strīdhana* had not been given. If, however, *strīdhana* had been already given before, then half of the property given to the (new) wife who is being taken in marriage, has been declared to be given to the superseded wife. (148).

1. *Adhivinnā* is derived from *Adhi* i. e. over, and *vinnā* i. e. married (from *vid* 'to marry') अविन्नं अविन्नं. The compound is formed after the rule in Pāṇini V 2 127 —'अन्त्ये सप्तम' Money which was obtained on account of the *Ādhivedana* or 'Supersession', is the *Ādhivedanikam* under the rule अथ नक्षत्रिणम् (Pāṇini V. I 38)

2. The word *Artha* (half) is used here in the masculine number and therefore not necessarily equivalent to half, it signifies a portion in general. See *Amara* I 3 16 *Sukodhā* p 78. See also Bālaubhāṣa p 271 II 19-21, where Bālaubhāṣa has established that in whichever gender the word be taken, it indicates a portion, rather i. e. a complement of the amount already received to make a half, and not a half exactly.

Śūlapāṇi

Yājñavalkya, Verse 148

- 5 To a wife for whom a co-wife has been brought, on account of the supersession an equal amount should be given. The meaning is, that as much as is given as a respectful gift to the new wife after her marriage, so much (should be given). If *Śitadhana* had been given, then a half should be given. (148)

[Colebrooke Sec. XII.]

[On the evidence of a partition].

- 10 (1) Having thus explained the law of distribution of the heritage, the Author next propounds the evidence by which it may be proved in a case of doubt

Yājñavalkya, Verse 149

- 15 When partition is denied, the fact of the partition may be ascertained by the evidence of kinsmen, relatives, and witnesses, and by written proof, or by (proof of) separate possession of houses or fields.

- (2) *Mitākṣharā*:—If a partition be denied or disputed (then)
vibhāga-bhāvanā, the fact of the partition, i. e. the certainty of the partition may be obtained by the testimony of *jñātībhiḥ*, kinsmen, i. e. of the
 20 *Pitrbandhus*, *Mātṛbandhus* such as the maternal uncle and the like; *sākṣībhiḥ*, witnesses viz. possessing the qualifications (of witnesses) as mentioned before,¹ or by the evidence of a writing, e. g. a record of partition. It may also be ascertained by *yautakāḥ*, separate, i. e. partitioned houses and fields

- 25 (3) The practice of agriculture or other business pursued apart from the rest, and the observance of the five² principal daily

1 Yājñ II 68-69 p 846 *supra*

2 पञ्चमहायज्ञविधिरुक्तम्—see Manu III 70, 71

अथवा प्रहयत् पितृवत्तत् त्वम् । हेनो देवो यत्किञ्चित् स्वस्रोतिनिधिपूजनम्

A unilateral declaration or communication is enough *Gurjabai vs Sadashie* 18, Bom. L. R. 620. Thus when a notice containing the intention was despatched on the 4th August, but it reached the addressee on the 9th August, the declarant's death on the 5th August did not affect severance *Nyampati Narayana Rao vs Mudhanappa Purushottam Rao* (1938) Mad. p. 315, or Shing a suit. *Dattatraya vs Prabhakar* 39 Bom. L. R. 94.

performances and other religious duties performed separately from them, are pronounced by Narada¹ to be tokens of a partition²
“Among un-separated brothers the performance of religious duties is single When a partition has been made indeed the (performance of)
“religious duties also becomes separate for each one of them”

5

(4) Similarly, other signs of previous separation are specified by the same Author³ “Brothers who are divided may perform the acts of
'giving evidence, of becoming a surety, bestowing and taking gifts,
“but never those who are not separated”

Thus ends the Chapter on the Distribution of Heritage

Here also ends the translation of the portion of the Mitākshara by Mr Colebrooke

(Contd from last page)

Separation among brothers raises no presumption of a separation between one of the brothers and his sons *Mt Mendu Awar vs Vartunyas Balsh S igh 3 Inst. 270*

An entry in the Record of rights showing the shares of each member is evidence of severance *Anuraga Awar vs Darshin Paut 40 Bom L R 758 (P C)*

Visne profits one cannot recover past mesne profits 38 Mad 150

1 Narada Ch XIII 37

2 Colebrooke reads one more verse from Narada viz No 36 Cl 13 : : the one immediately preceding No 37 It mentions additional facts proving partition It reads thus

विभाजनमप्यद्वे कदाहोत्रं विनिगम्य । शान्तं समाप्योपमेयं कृत्वा स्वयं वंशम् H 24 B

Tr : If a quest on arise (among co heirs) in regard to the fact of a partition it must be ascertained by the evidence of kinsmen by the record of the “distribution or by separate transaction of affairs *Ilāṅgalekhya* ५५००००० is a document evidencing partition This is one of the kinds of written evidence referred to in *Abh lekhya* ५५००००० in Yaṇi II 149 above

Ilāṅgalekhya gives another reading viz ५५००००० *Ilāṅgalekhya* “by occupancy and by writing or by a writing evidencing possession”

3 Narada Ch XIII 30

Vīramitrodaya

Thus having discussed distribution, the Author mentions the determining factors when there is a doubt about it

Yājñavalkya, Verse 149

5 " A partition has not taken place between us , when in this way a partition is denied, the determination of the separation : *i. e.* prior partition should be ascertained *i. e.* determined by the Chief Judge or the like, by the evidence of kinsmen, born in the father's family, of cognate
* kindreds, *i. e.* relations other than these, by the evidence of witnesses
10 of the qualifications stated before, and by other evidence as would be helpful in establishing the desired point, such as documents of partition of houses, lands, partition : *e.* which had become the exclusive property like the *yaṇḍaka*

By the use of the word *cha*, 'and', are included the signs of a partition stated by Nārada, 112 :
15 " Those whose income and expenditure of wealth is separate, and who mutually lend at interest to each other, " those also who exchange merchandise, these are separated, and no " doubt , and also of the Ordeal (149)

20 Thus ends the Chapter on Dāyavibhāga in the commentary on Yājñavalkya

Sūlapāṇi**Yājñavalkya Verse 149**

When a partition is denied, the partition should be established by the kindred by the (proof of) separated houses and lands. So Nārada
25 " Those whose receipts and expenditure are separate and who mutually lend at interest to each other, and who carry on business transactions separately, these are certainly separated, there can be no doubt " (149)

Here ends the Chapter on Partition

- In reference to a boundary as described above, six varieties of disputes are likely to arise as says Kātyāyana¹
- Six fold dispute: 'Excess or deficiency as to a part, existence, or 'absolute non existence (of the right itself), possession without previous
- 5 "possession by any other, and a boundary, are the six causes (that lead) "to a dispute regarding land" For example, in a claim by some one to the effect "My land here is more than five nivartanas²", an answer to the effect, "It is only five nivartanas and nothing more" it would be a dispute 'regarding excess' Where in an assertion by a
- 10 party that his land was five nivartanas, the answer is, 'it is not so, it is "indeed less than that", it would be a dispute 'regarding a deficiency' In an assertion by a party that his share in the land measured five nivartanas, a reply that he had no share at all, would constitute a dispute 'regarding the existence or absolute non existence' Where
- 15 in a suit, the plaintiff asserts "This is my land and is in my possession 'without any one being in prior occupation", and the defendant denies it, and says that his possession was indeed long and continuous, that would give rise to a dispute where 'possession without previous possession' is the point to be determined When there is a dispute whether *this* is
- 20 the boundary limit or *that*, it is a dispute 'regarding boundary'. In this way a dispute of this kind is likely to be of six varieties Although the sixfold dispute be regarding land, still as the boundary also is determined either under an express or implied text, (the consideration of) that has been incorporated in the chapter on 'Boundary disputes'
- 25 Those who belong to the neighbourhood are *neighbours*, Sāmānāh, and those, belonging to different contiguous villages on the four sides, are residents on each (point) of the boundaries For a text of Kātyāyana declares that "A town is the neighbour of a town, a field
- 30 "is said to be the neighbour of a field, a house has been indicated to be "that of a house on account of its being situated in the neighbourhood". By the words 'a town &c', are indicated persons residing therein e.g. in the expression 'the town was routed' The use of 'neighbours' is also indicative by implication, of those contiguous to them Kātyāyana also has said "Those who are closely contiguous are called neighbours,
- 35 "so also are those who are contiguous to these, and those who are "contiguous to the contiguous resembling a lotus in their formation."

Sthavirāḥ, the elders, i.e. old men. By using the word 'others' *Ādayah*, are included the *Maulas* and *Uddhrtas*. The definition of 'old men' and others has been given by the Same Author thus: "Those who have witnessed anything being brought about, are considered as old men being endowed with the qualities of them, quite apart whether they are actually aged or no."

"Those who lived before as neighbours and afterwards migrated to another region, are called by the sages the, 'natives' or *Maulas* of the place, as they had their (domicile of) origin in that place."

"Those, moreover, who, since they bring out a fact of old, as being borne out by tradition, by any act of peaceable possession and by special episodes relating to it are known as the *Uddhrtas* or the 'antiquarians'."

Gopāḥ, herdsmen, i.e. those who tend the kine. *Samakṛshāṇah*, cultivators on the boundary, i.e. tillers of the fields lying contiguous to the boundary. *Serve cha vanagocharāḥ*, and all persons moving in the forests, i.e. the foresters such as huntsmen &c. These, moreover, have been mentioned by Manu viz: "Hunters, fowlers, herdsmen, fishermen, root diggers, snake-catchers, gleaners and other foresters."

Sthalam, a mound, a raised portion of ground. *angārāḥ*, char coal, the refuse of fire, *tushāḥ*, chaffs, the coating of corns, *drumāḥ*, trees, like the (Indian) fig² tree, *setuh* a water-embankment, of a dam to a flow of water, *chatya*, a heap of stone, i.e. an embankment of stone or any other material. By the use of the word *Ādya*, 'any others', are included bamboos and &c.

These,³ moreover, are of two classes according as they are visible, or not visible. *Vide Manu*⁴ "Let him mark the boundaries (by) trees such as the *Nyagrodhas*⁵, *Asvatthas*, *kimsukas*, cotton trees *Salas*, *Palmyra* palms and trees with milky juice (246). By clustering shrubs and bamboos⁶ of different kinds, *Samas*, creepers and raised

1 Ch VIII 260

2 *Ficus Indica*

3 i.e. the boundaries

4 Ch VIII 246-248

5 *Nyagrodha* *Ficus Indica* *Asvattha*—*Ficus Religiosa* *Kimsuka*—*Rutea Fruticosa* *Salis Eholia Robusta* "Trees with milky juice" i.e. *Arka*—*Calotropis Gigantica*, *Udumbara* *Ficus Glomerata* &c. *Sama*—*Acacia Sama*6 *Nilam blatta* notices also another reading viz. *happala-palms* *Nanda pandita* reads *Kulyaka*

"mounds, reeds and thickets of the *kubjaka*¹ so that the boundary
 "(mark) will not vanish (247) Tanks, drinking reservoirs, wells,
 "and fountains should be built on boundary junctions, as also temples,
 "(248)" These are visible (marks)

- 5 "Having¹ seen that through men's ignorance of the boundaries
 "trespasses constantly occur in the world, let him (i.e. the king) cause
 "to be made other marks of boundaries which remain hidden (249)
 "Stones, bones, cow's hair, chaff, ashes, potsherds, dry cowdung,
 "bricks, cinders, pebbles, and sand (250) And whatever other things
 10 "of a similar kind the earth does not corrode (even) after a long
 "time these he should cause to be buried as invisible signs where
 "boundaries join (251) By these signs the king shall ascertain the
 "boundary (of the lands) of two disputing parties" These are
 (boundaries) with their marks hidden

PAGE 10c*

- 15 By means of these visible and invisible marks pointed out by the
 neighbours and others, the king should determine the boundary of
 the two disputing litigants

Vīramitrodaya

- Now the Author states the method of the delimitation of the
 20 boundary

Yājñavalkya, Verses 150, 151

- In a dispute regarding the boundary between two villages, the
 neighbours and those others stated before marked i.e. identified by
 means of mounds, char-coals &c should determine i.e. fix, the boundary.
 25 Kātyāyana states the characteristics of neighbours thus "A town is the
 "neighbour of a town, a field has been declared to be that of a field, a
 "house has been pointed out to be that of a house on account of its being
 "situated in the neighbourhood That village which by its encircling
 i.e. surrounding, is situated on the four quarters is the neighbour of
 30 that village The meaning is that in this manner also is of the land,
 house, etc (to be taken) By the word *grāma*, 'town', are spoken of
 the people residing there, *śikharidh*, 'elders, i.e. old men By the word
ādī, 'and others', are included the *manṣas*, *uddhṛtas* and others

The characteristics of *vṛddhas* &c have been mentioned by Kātyāyana thus : "Those by whom was seen the transaction, men possessing these qualifications, whether they are old or not old are declared as *vṛddhas*. Those, who were formerly residents at the place, and afterwards had gone to another region, these as they originally belonged to that place, are called *maulas* by the sages. Those, who, marked with the characteristics of knowing (the boundary) from hearsay, possession, transaction, tradition, (help to) bring out the decision, are therefore known as '*uddhṛtāḥ*' "

Gopdā, 'cowherds', those who tend the line *Simā-Kṛṣṇandā*, 'cultivators on the boundary' : *ε*, cultivators of the field on the boundary, *sarve vanachārino*, 'all persons moving in the forest, : *ε*, the hunters, fowlers, the forest guards and the like. By the use of the word *cha*, 'also', twice are included fishermen, gleaners and the like, as also root-diggers, snake-catchers and the rest. So also *Manu* : "Hunters, fowlers, herds-
men, fishermen, root-diggers, snake-catchers, gleaners and other
'foresters'

Sthūlāṅgāro, 'the hard charcoal : *ε*, the remnant of the wood from the fire. *Sthūlāṅgāra* is the tending in some places. In that case it should be explained as *sthalam*, 'a mound meaning a raised portion of the ground. *Tuṣṭhā*, 'chaffs, : *ε*, the coating of corn, *drumdh*, 'trees,' such as the *Plākṣa* or the like trees, *setuh*, 'embankment, *śalmikāḥ*, 'the nut hull, an elevated place well known in the Central Provinces, as *Dvā ubhundu* द्वौ त्र्यं, *nimnam*, 'slopes', such as pits, etc., *asthi*, 'bones, are well known, *chātṣāḥ*, a monumental village tree. By the word *ādya*, are included pebbles, etc. That has been stated by *Manu* : "Stones, bones, cow's hair, chaff, ashes, potshards, dry cowdung, bricks, cinders, pebbles and sand (250). And whatever other things of a similar kind the earth does not corrode (even) after a long time these he should cause to be burned as invisible signs where boundaries join
251 (150-151)

Sūlapāni

Yājñavalkya Verses 150-151

In a dispute about the boundary of a field the *Simā* is the local inhabitants, *vṛddhāḥ* 'the old. By the use of the word *etā* 'and like others', the hunters etc., are meant. By visible signs such as immovables etc. hidden marks, such as charcoal etc. the marked boundary they should determine (150-151)

When, however, the marks do not exist, or being in existence are ambiguous by reason of the non-determination of any mark thereof, the Author lays down, a rule for deciding the dispute

Yājñavalkya, Verse 152

- 5 Men of the neighbouring villages, or of the same village, being in number either four, eight, or even ten, having put on garlands of red flowers, and red dresses, and taking some of the earth, shall determine the boundary.

- 10 Mitākṣharā—Sāmāntāḥ, men of the neighbouring villages, i. e. as has been described before¹. Samagrāmāśchatwāroṣṭhaḥ daśāpi vā, or of the same village being in number four, eight, or even ten, thus being of an even number and belonging to the neighbouring villages;² putting on chaplets of red flowers, and clad in red garments, and with lumps of earth placed on their foreheads, shall determine—i. e. point out—the boundary.

- 15 The alternative suggested in the expression Sāmāntā vā "men of the neighbouring villages or", has a reference to the witnesses mentioned in other Smṛtis. For Manu³ has said: "The settlement of a dispute regarding boundaries shall depend on witnesses." Here therefore the decision by (means of) the witnesses is the chief course. Failing that, by the Sāmāntas. So it has been laid down by Manu⁴: "In
20 "the absence of witnesses, men from the four neighbouring villages, "who are pure, shall make a decision concerning the boundary, in the "presence of the king". Failing these, the neighbours of these shall decide, as says Kātyāyana: "When the men from the neighbouring
25 "villages are (suspected to be) corrupt on account of personal interests, "undoubtedly the decision must be obtained from men of the other "neighbouring villages, regard being had to the importance of the "interests at stake. When even such neighbours of the neighbours are "found to be faulty, it has been laid down that the neighbours of these "should be selected, but the king, knowing well the law, should never
30 "engage men who are vitiated."

1 i. e. on page 1149

2 Samagrāmāḥ—Both Mandlik and Borrodaisle translate Samagrāmāḥ as "of the village in which the disputed land is situate". The expression simply means "of the same village", and may be interpreted as has been done by the two eminent writers named above, or may be taken as adjectival of and qualifying the Sāmāntas, as has been done by Bālembhatta (see p. 275 l. 18). Aparārka notes a different reading altogether as "सामन्त वा समा ग्राम &c."

3 Ch VIII 253

4 Ch VIII 255

the witnesses, the neighbours &c. thus . "When a piece of ground has
 "been carried off by a stream and¹ thus the boundary marks have been
 "uprooted or destroyed, (they shall fix the boundary) according to the
 'inference to be drawn from (an inspection of) the spot, and according
 5 "to the measurements, and according to the traces of possession" : &
 they should determine (the boundary), by noting in those boundary
 regions where a down flowing river has carried off or washed away
 the marks and which have thus either been uprooted from their places,
 or been destroyed (altogether) There, (the expression) 'according to
 10 the inference to be drawn from the spot' means according to the
 inference as to the old spot, the marks whereof have either been up
 rooted or annihilated 'According to measurements,' e.g. 'The field lies
 on the west of this village measuring 1000 rods commencing from the
 village', and the like, or according to the evidence of long and immemo
 15 rial possession within the knowledge of and adversely to the opponent.
 PAGE 106*

A special rule has moreover, been laid down by Brhaspati² in this
 connection "Those persons will be proper witnesses in disputes of
 'this nature who know the origin of the title the evidence regarding
 15 "it, the duration of possession, the name and also the character of the
 20 "(particular) piece of ground'

These witnesses Samantas and others, moreover, being sworn
 according to the oaths of each, should be questioned by the king in the
 presence of *Kulas*³ &c. As says Manu⁴ "The witnesses (giving evidence)
 'regarding a boundary, shall be examined concerning the land marks
 25 'in the presence of the *Kulas* of the village, and also of the two
 "litigants' The witnesses &c thus examined should give a unanimous
 decision of all together regarding the boundary

The boundary thus determined by these, together with all the
 marks pointed out by them, with the names of witnesses &c specified,
 30 should be noted on a document that it may not be forgotten. It has

1 Dr Jolly interprets *सृष्ट, नष्ट* and *अष्ट* as separate results following from
 the actions of separate agents and translates thus "or abandoned (by the owner)
 or the boundary marks have been destroyed &c—' 2 Ch XIX 14

3 See Yājñavalkya II 30 & the Mitākṣharā thereon pp 746 747 &c, above

4 Ch VIII 234

also been said by Manu¹ "As they, being examined, declare the marks
"of the boundaries (to be) even so the king shall justly cause them all
"to be fixed between each village"²

If within an interval of three fortnights from the day of the
making of (a decision regarding) the boundary, no calamity either from 5
the king or God fall on these, i.e. the witnesses, *Sāmantas* and others,
then a proof of that would establish the decision as to the boundary
This interval about the calamity from God or king has been laid down
by Kātyāyana "In decisions regarding a boundary, in the case of the
"ordeals by *Kosa*, and of the touching of the (holy) feet, the interval 10
"for (the visitation of) a calamity from God or king is respectively
"three fortnights a fortnight, and seven days"

Viramitrodaya

When, however, the aforeslated marks do not exist, or are ambi-
guous by reason of their being or not being (regarded as) marks, then 15
the Author states the means for a decision

Yājñavalkya, Verse 152

Sāmantah, 'men of the neighbouring villages, as have been des-
cribed before, *samagramāḥ*, 'men of the same village', i.e., of the
immediately adjoining villages, *chatvāroṣṭau dasa va*, 'four, eight, or 20
ten', who themselves are sure of the boundary, with red flowers and
clothes on, and with clods of earth placed on their heads, *sāman*
nayeyuh, 'should determine the boundary, i.e., should definitely fix
The adverbs *api*, *va*, 'also', 'or', are indicative of option In the
expression 'or the *sāmantas*, the word 'or' intends witnesses, as says 25
Manu³ "In the determination of a boundary, the testimony of wit-
'nesses (may be availed of) Similarly⁴ "In the absence of witnesses,
'four men from the four neighbouring villages, shall make a decision
"concerning a boundary in the presence of the King Kātyāyana also
(same as p 1154 II 23-30 above) Similarly, in regard to witnesses, 30
the same author says "In the absence of the *sāmantas*, the *maulas*,
" *vidhrtas* and like others Manu⁵ "Placing earth on their heads"

1 Ch VIII 261

2 मर्यादा is a better reading than मर्याद which would read when translated
"and fixed by name"

3 Ch VIII 264

4 Ch VIII 260

5 Ch. VIII 267

“wearing chappels of flowers, and putting on red dresses, being each
“sworn by his meritorious deeds, let them settle (the boundary) in
“accordance with the truth

- After the determination in this manner, if any calamity owing to
5 the act of the King or of God does not occur to the *sāmantas* and the rest,
then the boundary determined by them should be (finally) fixed by the
King, vide this text of Kātyāyana “In the matter of the settlement of
“a boundary, in the orders by the *loka*, as also by the touching of the
“feet, (the occurrence of) a calamity from the King or God within three
10 “fortnights, one fortnight, or seven days (respectively) is regarded’ (152).

Sūlapāni

Yājñavalkya, Verse 152

- If there be doubt as to the marks themselves then the inhabitants of
the neighbouring villages, four, eight, or ten even in number with red
15 flowers on heads and clad in red robes, affirmed in the oaths stated
before, placing clods of earth on their head, should determine the
boundary (152)

- When, however, of those who gave evidence as witnesses, any
disease &c is noticed within the interval of three fortnights, or when
20 their evidence conflicts with the testimony of witnesses other than
those cited by the defendant, and who are entitled to more weight by
their qualifications and number, then those (former) deserve to be
punished for their false evidence The Author states the rule as to that

Yājñavalkya, Verse 153 (1)

- 25 In case of a falsehood, they should severally be punished by the king
under the muddling amercement

- Mitākshara —*Anrte, in case of a falsehood i.e.* for telling a lie which
was the basis of the decision, all the *Sāmantas* shall each be punished
*madhyamasāhasena, with the muddling amercement,*¹ i.e. with a fine of five
30 hundred and twenty four panas² That this penal provision refers to

1 There are three grades of *śahasas*, *सप्त सप्त* and *उत्तम*, see Narada

2 *अण* is a coin either of copper or of gold The ordinary *Pana* is equal
in value to 80 cowries i.e. about 3 or 4 pias

the *Sāmantas* is inferable from the fact that a separate provision of punishment has been made in other Smṛtis for the witnesses, *Maulas* &c. For says Manu¹: "If they determine (the boundary) in the manner stated, they are guiltless (being) veracious witnesses; but if they determine it unjustly, they shall be compelled to pay a fine of two hundred (panas)". Nārada² also having laid down the middling amercement for the *Sāmantas* in: "Should, however, the neighbours speak falsely when called upon to decide a question of this sort, they shall all be punished severally by the king, each having to pay the fine of the middling amercement," has prescribed a punishment of the first degree for the neighbours of these: "Should the rest of those engaged in a dispute regarding land tell a lie, these are (considered as) sinners, and shall be punished with a fine of the first amercement." The same punishment has also been laid³ down for the *Maulas*, Elders &c: "The *Maulas*, the Elders and the rest shall also each be severally punished with a penalty; they shall have to pay the fine of the first degree, if they make false statements". By the use of the expression *Ādi*, 'and the rest', are included, the cowherds, bird-catchers, hunters, and other inhabitants of the forest. Although, by reason of their being engaged in a sinful avocation, the use of the bird-catchers &c. is made only in pointing out the marks, and not in the actual determination of the boundary itself, still the imposition of a penalty is proper, as it is likely that a false statement may be made even in the pointing out of the mark or sign.

The rule as to punishment laid down in: "In the case of a falsehood, they should be severally punished," has a reference to (statements made through) ignorance, since Kātyāyana has laid down a separate punishment for those who do so by design thus: "If, of those many assembled together, all do not declare a decision either through fear or out of avarice, they shall be punished with the highest amercement." Similarly, the same punishment has been prescribed by the Same Author in case where there is a discrepancy among the witnesses: "If there be a discrepancy among those examined, they shall be punished with the highest amercement."

1. Ch. VIII 257

2. Ch. XI 7.

3. By Nārada Ch. XL 8.

Having thus punished the witnesses &c. for speaking falsehood through ignorance or other cause, a fresh proceeding should be commenced for determining the boundary: For the same Sage having observed: "After having punished in the case of a statement with-
5 "out knowledge, the (question as to the) boundary should again be in-
"vestigated", has laid down the procedure for determining the boundary thus: "Having excluded such of the neighbours as are (found to be)
"faulty, he should select others, and joining them together with the
"Mauḍas &c., the king should have the boundary determined; this is
10 "(the rule) known to those who are conversant with law."

Viramitrodaya

When, however, within the interval of three fortnights, a disease etc. is seen, then a punishment should be inflicted on them,
1 so says the Author

15 Yājñavalkya, Verse 153 (1)

Arctic, 'in the case of a falsehood' i. e., if they (are found to have) told a lie, for that reason, *tc*, 'these', i. e., the *sāmantas* and the rest should each be punished with twenty-five *panas*, the penalty for the
2 middling amercement.

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20 When, however, the *Sāmantas* and others conversant (with the locality) or the marks do not exist, how should a decision be made? So the Author says

Yājñavalkya, Verses 153 (2)

In the absence of persons knowing, or of marks, the king should
25 determine the boundary

Mitākṣharā:—In the absence of persons knowing, such as the *Sāmantas* and others, and also of marks, such as trees &c, *rājā simnah pravartitā*, the king himself shall determine the boundary, i. e. shall cause it to be determined. The causal is here understood. The land, the
30 subject-matter of dispute, lying between two villages, should be divided equally, and should be assigned to the two litigants, after specifying thus: "this is the land of this man", "this land is to go to

Śūlapāṇi

Yājñavalkya, Verse 153

If a false declaration be made, they should be punished by the king, each separately, with the maddling amercement. In the absence of marks
5 for identification, the king should himself make the boundary. (153)

With a view to demonstrate that this text is founded on justice, even though there is no room for supposing that it is not so, the Author mentions an extension¹ of the rule (stated in the last two verses)

Yājñavalkya, Verse 154

The same rule should be understood (to apply) in (the case of) a
10 garden, a ware-house, a village, a watering-place, a pleasure-garden, a house, a rain-watercourse and the like.

Mitākṣharā:—Ārāmaḥ, a garden, a piece of ground intended for growing and gathering flowers and fruits. Āyānaṁ, a ware-house,
15 i. e. a house, or a plot of ground set apart for storing husk or straw. Grāmaḥ, a village, is well-known. The use of the word village, moreover, is indicative of a town, by implication. Nipānaṁ, a watering place, i. e. a drinking place, such as a well, a pond and the like. Udyānaṁ, a pleasure-garden, i. e. a pleasure bower. Vésma, a house, i. e. a dwelling
20 place. In (the case of) these i. e. the garden &c., this very vidhiḥ, rule, i. e. as characterised by the (rule about) sāmantas, witnesses &c., should be known (to apply). Similarly (should be the rule) in the case of water-courses arising from excessive rain-fall i. e. in disputes
25 of a kind where it is alleged that "the course of water flows by the middle (line) of these two houses or those two". By the use of the term *Adi*, 'and the like', the same old rule should be known to apply in the case of mansions also. For Kātyāyana also says: "And also in
30 "the case of a field, a well, a tank, and even a meadow, or a garden; "a house, a mansion, a resting place, the abode of a king and the "temple of god."

1. An अतिरिक्त is an extension or an extended application of a rule to things not directly covered by the rule itself. For an explanation of this passage see Bīṭambhatṭa. pp. 277 and 278. and note 5 on p. 282.

Vīramitrodaya

With an eye to brevity in the treatise, the Author extends the afore-stated law to another subject

Vājñāvalkyas Verse 154

Ārāmaḥ, 'a garden', i.e. a pleasure garden, *dyātanaṃ*, 'a warehouse', a piece of land set apart as for stocking husk, straw, etc., *grāmaḥ*, 'a village', is also indicative of a town by implication, *nīḍaṇaṃ*, 'a watering place, such as a well, a reservoir, etc.', *nīḍyaṇaṃ*, 'a pleasure bower', i.e. a piece of land set apart for sport, *īśma*, 'a house', i.e. a dwelling place, *īśahambupravāha*, 'a rain water-course', i.e. a channel of water produced by the monsoon showers for these, *śāśa* etc., 'this same', i.e. as stated in regard to the boundary, is *vidhikā*, 'rule', i.e. the method of determination. By the word *ādī*, 'and others', are included a field, door, etc.

Brhaspati "From since the time of its foundation, a house, a pool, a shop or the like, whatever has been occupied by a man in whichever manner and upto whatever period, that must not be disturbed from him" (24) "Windows, water courses, as also a projecting balcony, a channel for the outward flow of water from a quadrangle, constructed before, must not be removed" (25) *Pranālī*, 'a water course', *nirvyūṭha tedikā*, 'a projecting balcony', a balcony made of elephant tusks, *chatusśidham*, 'a quadrangle', a house with four doors, *syandamukhā*, 'channel for water', i.e. a portion of the floor, known as *osarī* अंशः *Kātyāyana* "One should not let rain-water drop, nor construct a gutter in another's house" **Brhaspati** "A privy, a fire place, a pit, a receptacle for leavings of food and other (rubbish) must never be made very close to the house of another person Similarly" "A passage through which men and animals go to and fro unprevented is called *samsarāna*, and must never be obstructed by any one *Kātyāyana* "One should construct a ring for discharging ordure, urine and filthy water, a fire place and a pit after leaving a space of a couple of cubits from the wall of another *Chakram*, 'ring', for oil etc. Similarly "Of trees springing up in the midst of the boundaries of two fields, the fruits and the flowers produced therefrom should be made over to the owners of the fields i.e. to the owners of the two fields Of the trees which have sprung up in one man's field, where the branches become embedded in another's field, that one should be regarded as the owner of these in whose field they have become embedded, these i.e. the branches (154)

1 Ch XIX 24 2o

2 विष्णुविद्या Dr Jolly translates 'a peg projecting from a wall (used to hang them on)

3 चतुर्गुह्ये १५ द्वितीया शतवर्षेति न चालयेत्—Dr Jolly Tr 'a square of four buildings and a channel for the exit of water 'must not be blocked'

4 Verse 713

5 दृष्टिर्न—another reading is दृष्टिर्न—a window commanding a view

6 Ch XIX 26

7 Brhaspati Ch XIX 27

8 Verse 704 9 चतुर्—another reading is चतु—a mound 10 Verse 760-761

Śūlapāṇi

Yājñavalkya, Verse 154

As to these i.e. the gardens etc. this same rule i.e. as characterised by the Sumanas witnesses etc. should be understood. By the word *adh* are included fields etc. (154)

Having stated (the rule regarding) the decision of a boundary, the Author states, in that connection, the punishment for destroying the boundary marks and the like (acts)

Yājñavalkya, Verse 155

For breaking up the boundary, for encroaching beyond the boundary, likewise, and for usurping the lands the punishments are the lowest¹, the highest, and the middlemost (respectively)

Mātāksharā—The common (plot of) land separating many fields is a *maryādā*, boundary, for breaking that up with force, *smātikramane*, for encroaching beyond the boundary, i.e. for encroaching beyond the boundary and ploughing and also for usurping a land by a show of fear &c., the punishments respectively, of the lowest, the highest and the middlemost *Sāhasas* should be understood. The use of the word 'land' (*śhetra*) here is intended to include by implication, a house, a garden &c.

When, however, he usurps land &c. under a mistaken notion of (the same) being his, then a fine of two hundred (*panas*) should be understood. As says Manu² "He who by intimidation usurps a house, a tank, a garden or a field shall be fined five hundred (*panas*) (if he does so) through ignorance, (the fine shall be) two hundred (*panas*)". Having regard to the magnitude of the land or the property usurped, even the highest amercement may sometimes be prescribed. And it is for this that it has been said³ "Corporal punishment, confiscation of the entire property, banishment from the town, and branding, as well as amputation of that limb (with which the crime was committed) is declared to be the punishment for a *Sāhasa* of the highest degree."

1 See Narada Ch. XIV for a detailed description of *Sāhasas* or offences.

2 Ch. VIII 261

3 By Narada XIV 8. The edition of Narada by Dr. Jolly reads one more line before the two quoted by Yājñanesvara. It runs thus:

उत्तमे साहसं दण्डं अस्त्रावर दण्डने

Tr. For *sāhasa* of the highest degree a fine of not less than a thousand (*panas*) is ordained.

Viramitrodaya

On the occasion (of discussing) the boundaries, while mentioning the penalty for a transgression thereof, the Author states the same penalty in another connection also with a view to brevity of the treatise

Yājñavalkya Verse 155

The common plot of land disconnecting the fields, etc is *maryadda*, 'the boundary' For a forcible breaking of that and for transgressing the boundary and beyond that by tilling etc usurping the land of another by a show of fear, etc, the punishments of the lowest, highest, and the middlemost ameracements should respectively be administered. By the use of the word *tathā*, 'likewise', immediately connected with the word 'land' are included the houses, gardens, etc By the word *tu* 'however', is excluded the breaking up of a visible mark (155)

Sūlapāni

Yājñavalkya Verse 155

For the breaking up of a boundary i e for transgressing a boundary, for taking away land, respectively the punishments are the middling and the highest ameracements (155)

Moreover, when after obtaining the permission of the owner of the field either by request or by payment of money a man wishes to erect a dam for water, or sink a well and if the owner of the field obstructs him the owner himself is punishable So the Author says

Yājñavalkya Verse 156

An embankment, however producing benefit should not be prohibited, where the injury is slight, (as also) a well which occupies but little space, but has abundance of water, which deprives another of his land

PAGE 108*

Mitaksharâ — *Setub*, an *embankment*, i e the construction of a dam to a waterflow should not be stopped by the owner of the field, even though it *deprives*, i e destroys another's land, provided that it causes little injury and is productive of much benefit (to many) A well, moreover as it occupies a small portion of land causes little injury, and is beneficial on account of the abundance of water (in it), (so it) should never be stopped The use of the word *well*, moreover, is indicative by implication of a small well, a water pond and the like others From this it necessarily follows that when, however, it occupies the whole field and thus causes much injury, or being in a field in the vicinity of a

river or similar other water place is productive of very little benefit, it may be stopped. The two fold character of an embankment has been mentioned by Nārada¹. "There are two sorts of dykes (or water courses), one called *lheyah* (i.e. one which may be dug into the ground), and another called *bandhyah* (i.e. one which may be built up). It is called a *lheyah*² when it lets (out) water to flow, and it is called *bandhya* when it stops water from flowing."

When, however any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he should do so only after asking the permission of the former owner or his descendant, or of the king. As says Nārada³. If a man were to put in repair a dyke erected long ago but decayed, without asking the permission of the owner, he shall not have the (use and) profits of it (20). "When, however the owner is dead, and also all his human progeny he may ask the (permission of the) king and may set the dyke in order (21)."

Vīramitrodaya

The Author mentions an exception to the fine stated for usurping a field

Yājñavalkya Verse 156

If to the owner of a field the injury be slight if such an embankment i.e. dam is productive of great benefit to others then the constructor of the embankment should not be prohibited i.e. stopped, by the owner of the field. The clause which deprives another of his land is connected to both. In a small field a well with abundant water should not be prohibited. By the use of the word *tu* 'however, is excluded an embankment which would cause injury to many on account of its injuring the whole field (156).

Sulapani

Yājñavalkya Verse 156

If in another's field an embankment which is being constructed by another be useful for many and cause slight injury to the owner of the field then such a one should not be prohibited similarly a well also (156).

1 Cf. XI 18

2 See Nārada Ch XI 19. Where the necessity of both these kinds is explained viz. too much water destroys a crop and therefore it is to be let out (*lheyah*), so also too little causes the crop to wither and so also water has to be stored (*bandhya*). See Rajambhatta p. 278

3 Ch XI 20 21

river or similar other water-place, is productive of very little benefit, it may be stopped. The two-fold character of an embankment has been mentioned by Nârada¹ "There are two sorts of dykes (or water-courses), one called *kheyâ* (i.e. one which may be dug into the ground), and another called *bandhya* (i.e. one which may be built up). It is called a *kheyâ* when it lets (out) water to flow; and it is called *bandhya* when it stops water from flowing".

When, however, any one wishes to repair a dyke prepared by another and destroyed by delapidation or any like cause, then he should do so only after asking the permission of the former owner or his descendant, or of the king. As says Nârada¹ "If a man were to put in repair a dyke erected long ago but decayed, without asking the permission of the owner, he shall not have the (use and) profits of it (20). When, however the owner is dead, and also all his human progeny, he may ask the (permission of the) king and may set the dyke in order (21)".

Vîramitrodaya

The Author mentions an exception to the fine stated for usurping a field

Yājñavalkya, Verse 156

If to the owner of a field the injury be slight, if such an embankment i.e., dam is productive of great benefit to others, then the constructor of the embankment should not be prohibited i.e. stopped, by the owner of the field. The clause "which deprives another of his land" is connected to both. In a small field a well with abundant water should not be prohibited. By the use of the word *tu*, 'however', is excluded an embankment which would cause injury to many on account of its injuring the whole field (156).

Sûlapânî

Yājñavalkya Verse 156

If in another's field, an embankment which is being constructed by another be useful for many, and cause slight injury to the owner of the field then such a one should not be prohibited, similarly a well also (156).

¹ Ch XI 18

² See Nârada Ch XI 19. Where the necessity of both these kinds is explained viz. too much water destroys a crop and therefore it is to be let out (*kheyâ*), so also too little causes the crop to wither and so also water has to be stored (*bandhya*). See Balambhatta p. 278.

³ Ch XI 20-21

The rule as to the owner of the soil has been laid down (in the last verse). Now the Author mentions a rule regarding one who constructs a dyke

ॐ

Yājñavalkya, Verse 157

If a man construct a dyke in a field without even informing the owner (of the field), the right to the produce is that of the owner, and in his absence, that of the king.

Mitākṣharā :—Without asking the permission of the owner of the field, or in his absence, of the king, he who *parakṣhetre setum pravartayati*, constructs a dyke in another's field, (that man¹) will not be entitled to enjoy the produce. But in the produce reared therein, the right of enjoyment is that of the owner of the field, or in his absence, that of the king. Therefore the purport is, that the permission of the owner must be obtained either by request or by payment of consideration, and in his absence, of the king, and then a dyke should be set up.

Viramitrodaya

One desiring to construct an embankment or a well in another's land should obtain the permission of the owner of the field by a request or by money-payment, or when that is not possible, should obtain the permission of the king, and then should he construct it. Intending this, the Author proceeds

* Yājñavalkya, Verse 157

As regards the crop produced from it, when there is abundance of harvest, the (right of) enjoyment will be of the owner of the land, and not of the one who erects; when, however, the owner does not exist, then the (right of) enjoyment of the produce goes to the king. The word *eva*, 'even,' goes with the word 'owner,' thereby the constructor of the embankment is excluded (157).

Śūlapāṇi

Yājñavalkya, Verse 157

Without informing the owner of the field, if any one constructs an embankment, (then) after the embankment is completed, the owner of the field has the right to the enjoyment of the embankment. In his absence (the right is) of the king (157)

It has been said that the owner of a field should not obstruct the construction of a dyke. Now, the Author mentions another rule which has a close bearing in the same context.

Yājñavalkya, Verse 158

5 He who does not cultivate himself, or through another, a field, even when it was broken by the ploughshare, should be made to pay the produce obtainable from the land and the field should be got cultivated by another.

Mitākṣharā—He, however, who having undertaken in the presence of the owner of the field "I shall cultivate this field", afterwards gives
10 it up, nor gets it cultivated by another, then, even when that field *phālābatam*, was broken by the ploughshare, &c. was dug up a little by the plough, and therefore was not properly prepared for the production of a good crop, still of the land so dug up, the produce &c. such as was likely to be produced from it as determined by the neighbours &c.
15 should be made to be paid by that cultivator, and the field also should be taken away from the former cultivator and should be got cultivated by another.

Here ends the chapter on Boundary Disputes.

Vīramitrodaya

20 On the occasion of the (discussion about) the field, the Author says

Yājñavalkya, Verse 158

'I will till this land thus having undertaken with the owner of the land, one who afterwards does not cultivate himself, nor cause it to be cultivated by another when it was furrowed with the plough, such
25 a one should be compelled to pay as much as may be determined by the *Sāmantas* or others as the likely yield of the land. And the land also should be taken away from him and should be got cultivated by another (158)

30 Thus ends in the Commentary called Vīramitrodaya on the Yājñavalkya Smṛiti on the Chapter Boundary Disputes

Śūlapāni

Yājñavalkya, Verse 158

In some places the reading is *halahatam*, 'broken by the plough'.
35 A field even though broken by the ploughshare, after accepting it, if one does not perform the sowing operation nor does he either cause it (to be performed) such a one should be made to pay, even as from the uncultivated field the quantity as may have been produced if cultivated, and it should be got cultivated by another (158)

Thus ends the Chapter on Boundary Disputes.

CHAPTER X

Of disputes between the Owners of cattle
and their Herdsmen :

The several titles of *Vyavahāra* are not related to each other as cause, or the thing containing the cause, and therefore, no particular order of enumeration was intended in the text, 'Of these the first is "payment and recovery of debts &c" Therefore by inverting the order (of enumeration) the Author now states the rules regarding disputes between the owners of cattle and their herdsmen

Yājñavalkya, Verse 159

A female buffalo doing damage to the crop shall be fined eight *māśhas*, a cow, half of that, and a goat or a sheep, half of that
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Mitākṣharā —A female buffalo causing damage to a stranger's crop shall be fined eight *māśhas*, a cow, half of that, i.e. four *māśhas* Goats, as also sheep shall be fined two *māśhas* Since the female buffalo and the rest are incapable of owning wealth, the person who owns these is intended A *māśha*, moreover, is here intended to signify the twentieth part of a copper *pana* For, *Nārada*¹ has stated "A *māśha* is considered as the twentieth part of a *pana*"

This rule, moreover, applies where the trespass has been without the knowledge (of the owner) When, however, the trespass is by design, the rule laid down in another *Smṛti* should be observed viz: "Two quarters of a *pana* for a cow, and double that for a female buffalo; similarly, for a goat, a sheep and calves, a quarter has been laid down as the fine" What, however, has been laid down by *Nārada*² 'For (a trespass by) a cow, he should inflict a fine of one *māśha*, for (a mischief by) a female buffalo, two *māśhas*, and in the case of a goat, a sheep and calves, the fine shall amount to half a *māśha*," has a reference to crop which had ripened into sprouts, and which has been eaten up leaving only the roots

1 See Digest Book III Ch IV pp 87-104

2 Manu Ch VIII 47 referred to above see p 616 ll 15-25, see also

Yājñ 1 362-367 and commentaries

3 App 58

4 Ch XI 31

Viramitrodaya

Yājñavalkya Verse 159

- The she buffalo should be fined eight *māśhas*. A cow destroying the crops should be fined half of that i.e. four *māśhas*. The goat and the sheep when the crops are damaged should be fined two *māśhas*, thus the connection of words is in the inverse order. Here, as the she-buffalo etc. are devoid of money, the fine is impossible (to be recovered), and therefore their owners should be (held liable). *Māśha*, moreover, here is the silver one, stated before and equal to two silver coins, should be taken, vide the text of the Bhāṣyakāra. "In matters of fine the calculation of the amount is to be made by golden *māśhas*, in case of trespass by the beasts on crops, however, by other, i.e. the silver *māśhas*. *Pana* means the *karṣhāṇa*, a quarter of that i.e. the fourth part. According to Ratnākara "In the case of goats etc. the quarter should be the penalty when the crops are eaten at night. "For a cow, a *māśha* should be ordered as the fine to be paid, so, for a she-buffalo two *māśhas*, and for the goats, sheep and calves, the fine shall be half a *māśha*. this text of Nārada¹ is applicable when the residue of the roots fit to be developed into sprouts had been eaten (159)

Śūlapāni

Yājñavalkya, Verse 159

- Māśha* here is the twentieth part of a *paṇa*. By the words she-buffalo etc. are expressed their keepers. For the destruction of crops on account of the she buffalos the keeper shall be fined eight *Māśhas* on account of a cow, four on account of a goat or a ram, two each (159)

The Author mentions a double fine in certain circumstances having regard to the magnitude of the injury

Yājñavalkya, Verse 160 (1)

- For cattle eating and lying in the field the fine is double of that mentioned (above)

Mātākṣarā —If the cattle after eating the crop in another's field (are allowed) also (to) sleep there unwarded, then *yathoktat dwiguno*

dando, a fine double that mentioned above should be understood. Of cattle eating and lying with their calves, moreover, a fine four times that mentioned above should be understood, vide the text: "Of those resting (there) a double fine has been laid down, and of those accompanied by their calves, a four fold (fine)"

Vīramitrodaya

Yājñavalkya Verse 160 (1)

When after eating the crop in another's land, and being fully satiated, (are allowed to) rest down there without being warded off, then the she-buffalo and the like should be fined with double the amount of that stated before. For those with their calves and resting down, the fine should be imposed four times of that stated before, vide the text 'Of those resting (there), a double fine has been laid down, and of those accompanied by their calves, a four-fold (fine) 160 (1)

The Author mentions an extended application of this rule in regard to other fields and cattle

Yājñavalkya, Verse 160 (2)

The fine for these is equal as in the case of lands where grass or fuel is stored, and the fine for an ass or a camel is the same as for a female buffalo.

Mitāksharā—Vivatah is the portion of land where grass and fuel are stored in abundance, and which is enclosed and guarded. In the case of a trespass upon that also, samam dandam, a fine equal, to that in the case of other fields should be understood in the case of these, eshām, i.e. of the female buffalo and the like

The asses and the camel (joined together make the compound expression), an ass or a camel, kharoshtram, that should be regarded as the same as for a female buffalo. Wherever and by whichever penalty a female buffalo is punished, in those places and by a similar penalty shall the ass and the camel be each severally punished. In the matter of obstructing the (growth of the) crop the ass and the camel are each equal to a female buffalo, and the fine also has been prescribed according to the extent of the injury, and thus in the compound expression Kharoshtram the conjunct compound is not intended.

Vīramitrodaya

Yājñavalkya, Verse 160 (2)

Paṭam, land with profuse quantity of grass intended as a pasture ground for the cows and other cattle and guarded by another. There, for the she buffalos and other grass eating beasts, on these a fine *samam*, 'equal,' i.e. equal to the hind, to as much as was consumed of the crop, should be laid. An ass and a camel make up the compound expression 'ass and camel' *Pharoshuram*, that *mahūṣṭsamam*, 'equal to a she buffalo,' i.e. as much fine is laid for a she buffalo for the destruction of a particular quantity of crop, so much fine shall be for the ass and the camel also. This is the meaning [160 (2)]

Sūlapāṇi

Yājñavalkya, Verse 160

After consuming and being seated at their pleasure, the penalty to be inflicted should be double of that stated above. Of these i.e. of the she buffalos and others in regard to the pasture land the punishment shall be the same. By the word *ṛmā*, pasture ground, is meant the portion of land preserved for grass etc. For the destruction of the crops etc. by asses and camels, the punishment should be the same as for a she buffalo (160)

For destroying the crop of another, a fine has been laid down for the owner of a cow (&c). Now the Author states the rule according to which he should also be made to pay (the value of) the crop to the owner of the field.

Yājñavalkya, Verse 161

As much crop as may be destroyed so much grain shall be paid to the owner of the field, the herdsman shall be chastised but the owner of the cattle incurs the fine already mentioned (before)

Mitāksharā—*Sasya* crop, is used to denote generally the produce of fields. *Yāvat*, as much, straw, grain or the like, as is destroyed by cows or other cattle in a particular field *tāvat kṣetraphalam* so much produce of the field, shall *swāma*, the owner, of these be compelled to pay to the owner of the field i.e. according to the valuation determined by the *Sāmantas* in this form "From such land, the produce would be so much."

Gopastu, but the herdsman, shall only be beaten, he shall not be compelled to pay for the produce. The chastising of the herdsman, accompanied by the pecuniary fine above mentioned, must be understood to apply in the case of an injury to the crop by the fault of the keeper, *vile* the text "If a cow straying through the fault of the keeper, do damage to the crops, no penalty is in that case exacted from the owners (of the cattle), the herdsman (alone) is punishable (for the damage done)"

Again, the owner of the cattle incurs only the fine already mentioned, and not a corporal punishment, if the crop is damaged on account of his own fault. But in every case the produce must be made good by the owner of the cattle alone, inasmuch as he participates in the produce of the field by means of the milk obtained from female buffalos and the like, fed and fattened on the produce of the field

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The produce, such as straw &c, remaining after the quantity consumed by the cows and the like, should be taken by the owner of the cattle alone. Since he has purchased it as it were, by paying the price adjudged by the arbitrators. And so **Narada**² (observes) "When a man claims back the Crop consumed by cattle, that quantity of grain should be given to him (by the owner of the cattle) which would have been produced³ from the field in the estimation of the Śramantas. The chaff shall be paid to the owner of the cattle, and the corn to the cultivator⁴"

Viramitrodaya

On a destruction of crops not only is he to be punished, but he must be compelled to render the produce to the owner of the field, so says the Author

Yājñavalkya Verse 161

Yatāt saryam, 'as much crop, as may be destroyed on account of being eaten by the she buffalo and the like, the value of so much produce

1 Of Narada Ch XI 30

2 Ch XI 38-39

3 वसिष्ठ from वृ 'to sow,' as also 'to reap.' The latter meaning better suits the context and therefore has been selected. See Dalambhatta: p 280

4 Dalambhatta adds "i.e. the owner of the field is not to get anything."

Digest Vol II p 100

as may be reasonable should the owner of the field be getting from the owner of the she buffalo etc This is the meaning By the use of the word *tu*, 'however', the Author discriminates the produce of the crop of that portion of the field which has been left out of the damaged part

a The cowherd, however, is to be chastised only, and should not pay the produce of the field, for the reason, it appears, that the owner enjoys the result of the consumption of the crop in the form of milk etc Chastisement, moreover, is an extension of the aforesaid penalty. vide the text 'If a cow straying through the fault of the keeper, do

10 "damage to the crop, no penalty in such a case should be imposed upon "the owner, the keeper deserves the punishment Gomi, 'the owner of the cow. This is only an indication The owner of she buffalos etc. also incurs the penalty as stated before By the word *tu*, 'however', the Author discriminates chastisement (161)

15 Sūlapaṇi

Yājñavalkya, Verse 161

As much of the crop as is destroyed on account of the trespass by the she buffalo etc. so much only as may be determined by the *sāmantas* etc shall the cultivator obtain from the cowherd When that is not possible

20 the cowherd should be chastised while the owner of the cows incurs the penalty as stated before Usanāh mentions an offence for demanding the grain eaten by the cow If a man demands back the corn eaten by ' the cows his ancestors will not eat that food nor will the heavenly "divinities consume it (161)

25 The Author mentions an exception in the case of particular fields
Yājñavalkya, Verse 162

There would be no trespass if without any intention (on the part of the owner) the cattle stray by a road, or in a field in the neighbourhood of the village store But in the case of a wilful trespass he deserves punishment like

30 a thief

Mitāksharā —Path *by a road*, i e adjoining the village In a field situated in the neighbourhood of the village store if the crop is consumed by the cattle without any design on the part of the owner there would be no fault either of the herdsman or of the owner The statement

35 as to the absence of any guilt, is made with a view to indicate the absence

of any punishment as well as to prohibit the payment of the value of the crop

Kāmachāre in the case of a wilful trespass, i e if the cattle are designedly made to stray, **chauravat**, like a thief, i e that punishment which is meted out for a thief, such a punishment **arhate**, he deserves

This rule moreover is with reference to an open¹ field Since absence of punishment has been stated by **Manu**² in reference to an unenclosed field Where (the field containing) a crop is unenclosed, and if cattle destroy it the king shall not in such a case inflict a "punishment upon the keepers of cattle" If however, it is enclosed, then a trespass does occur even in (reference to) a field on the roadside &c The same Sage has laid down the preparing of a hedge³ thus "He (i e the owner of the field) shall make there a hedge over which a camel cannot peep and stop every gap through which a 'dog or a boar can thrust his head'

Sûtpâni

Yājñavalkya Verse 162

Patha in the way i e in the vicinity of the village pasture grounds **Kshetre** in the field i e without (any) intention (on the part) of the keeper etc when the crop is consumed by the she buffaloes etc there is no fault of the keeper etc

For purposely (causing) the eating however the penalty would be as aforesaid (162)

The Author states another rule where there would be no penalty even in the case of particular beasts

Yājñavalkya, Verse 163

A big bull beasts let loose beasts recently delivered straggling beasts and like other beasts over whom there is no keeper, and beasts distressed⁴ by (the acts of) God or the king should be set free

1 अगण 1 e Unenclosed

2 Ch VIII 238

3 Manu Ch VIII 239

4 Colebrooke interprets दृष्टमनुत्तम as the cause of the disturbance by the beasts and translates 'For they are unspelled by God and the king'

Mitākṣharā—A bull and (one which is) a big one is a 'big bull', mahokṣha, १८, sprinkler¹ of seed 'Utsrshitapasavaḥ beasts let loose, १८ let loose in honour of a deity according to the rites for consecrating bulls or the like. Sūtikā, a least recently delivered १८ within ten days of their calving. Āgantukāḥ, straggling beasts, १८, wandering away from its own herd, and coming from another (part of the) country. These should be mochyāḥ set free, should not be fined even when another's crop is consumed. Also those over whom there is no keeper, even these dāivarājapamplutāḥ, being distressed by (the acts of) God and the King, १८ being overpowered by God and the King, shall not be punished by the owner of the field wherein the crop has been damaged.

By the use of the term *ādī*, 'and like others', are comprehended also the elephants, horses, and the like. These, moreover, are mentioned by Uśanas². "The (owners of the) elephants and horses shall not be fined, for they are looked upon as the protectors³ of (king's) subjects, so (also) are not punishable beasts with one eye, or hump-lamed beasts, as also those which have been once branded. So is unpunishable a stray cow, or a cow which has (recently) calved or which is unmanageable. So also are the cows exempt from punishment in times of festivity, or on an anniversary day."

Here, in the case of beasts which are let loose and so are without any owner, there is no possibility of a punishment, and the above have been referred to as illustrative, १८ as consecrated beasts cannot be punished, so a big bull and the like (should be left unpunished).

Viramītrodaya

The Author states the penalty etc. in special cases of fields, and animals.

Yājñavalkya, Verses 162, 163

On the way, in the fields adjoining the village pasture grounds when crops are eaten by a cow etc., the fault is of the owner of the cow, even if it was without the wish of the cowherd. The fault of the cowherd

1. A bull specially reared for impregnation.

2. Cf. also Yājñavalkya Ch. VI. 32.

3. *Upādāyā* adds *अपराधिनोऽपि न दण्ड्यः* अपराधिनोऽपि न दण्ड्यः.

moreover, does not come in for a penalty. When, however, the cows etc are deliberately made to graze, the attendant at the grazing deserves punishment like a thief. This absence of a fault, moreover, is to be observed where the field is uncovered and the eating thereof has been for a short period, *vide* the text of Manu¹ "Where the crop is unenclosed, and
 "if the cattle destroy it, the King shall not, in such a case, inflict a punish- 5
 "ment upon the keepers of cattle and also *vide* the text of Vishnu² :
 "On the road at the end of the village pasture ground, there is no fault,
 "except during the harvest time

Mahaksho, 'a big bull, i.e. a sprinkling bull, *utsrshataprasavo*, 'abandoned animals, such as at the exequal rite of dedication of a bull and the like, dedicated animals such as, a bull, a heifer and the like, *satikā*, 'recently delivered, one who has not come out of the tenth day after delivery, *agantukah*, 'stragglers, such as detached from their own herds and coming from another region only. By the word *ada*, 'and others, are 15
 included "unpunishable are the elephants and the horses, for they are
 'declared as protectors of the subjects stated in this text of Another
 Smṛiti *Mochyah*, 'should be set free i.e. should not be punished. Such of
 the cows etc whose keepers are immersed in calamities due to the act
 of King or God, these should be let off as helpless. In the case of those 20
 that are dedicated, no punishment is possible as there is no owner, and
 it should be understood that their mention is only by way of giving an
 illustration. By the word *tu*, 'however, are excluded from being released
 all others than those mentioned (162-163)

Sulapāni

25

Yājñavalkya, Verse 163

The great bull such as intended for the God a bull dedicated after being branded and marked with a disc. A recently delivered cow is one which has not completed ten days after delivery and stray ones also. By the word *ada* 'another like are to be taken those mentioned in the text³. Unpunishable are the elephants and horses for they have been 30
 declared as the protectors of the subjects so also are not punishable beasts with one eye or humpbacked beasts as also those bulls which have been branded with a discmark. Of these those for whom there is no watchman should be let off. The herdsman should be punished, this is the 35
 meaning. Similarly those destroyed by the fate or by theft (163)

1 Ch VIII 238

2 Ch V 146

3 Of Usanas & Narada see p 1176 note 2

The rules as to the owner of a cow have been stated, now the Author prescribes (a rule) for the herdsman

Yājñavalkya, Verse 164

Let the herdsman restore the cattle every evening in the same condition in which they were entrusted (to him) For such as have perished or vanished through (his) fault, he should be compelled to pay if he had stipulated for his wages

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- Mitākṣharā —As the cattle were made over in the morning by counting by the owner of them, in the same manner should the herdsman, in the evening time, restore the beasts to the owner after counting (thereof) For cattle perishing or vanishing *pramādena* through fault, i. e. through his fault, a herdsman who *kṛtaveśanah* has stipulated for his wages i. e. whose wages have been fixed should be made to compensate the owner The (rule for the) determination of wages has been stated by Nārada "The annual wages of a herdsman for a hundred head of cattle shall be a heifer for two hundred a cow, and the milk (of the whole herd) every eighth day" The loss by negligence has moreover been clearly explained by Manu¹ For a beast which has been lost, or destroyed by worms, or killed by dogs or (has died) by falling into a pit, and if no proper efforts are made the herdsman alone shall be made to pay He shall not be made to pay for those which have been forcibly taken away by robbers As says Manu² 'But for an animal forcibly taken away by robbers the herdsman shall not be made to pay provided he informed the owner at a proper time and place Of those, moreover which have perished by (the acts of) God or the King the ear &c should be exhibited *vide* the text of Manu³ 'If cattle die let him carry to his master then ears skin tails, bladders, tendons and the yellow concrete bile and let him point their particular marks'

In the condition in which in the morning the cattle may have been made over by the owner to the herdsman as without any scar or any other fault, in the same condition in the evening must the cowherd deliver them back. For such as may have died or been lost through (his) mistake, the cowherd should be made to pay, provided wages had been stipulated for him (164) 5

Yājñavalkya, Verse 165

On the loss of a beast by the fault of the herdsman the fine ordained for him is thirteen *panas* and a half, and he shall pay¹ the money to the owner 10

Mitaksharā — Moreover, when, on account of the fault of the keeper, an animal is killed, the keeper should be ordered to pay a fine of thirteen *panas* and a half, and to the owner an amount equal to the value of the beast, as determined by arbitrators. This verse laying down the measure of the fine has not been mentioned by any one before 15

Viramitrodaya

On what occasion, for the trespass by animals is the owner punishable, and on what occasion moreover is the keeper? To such an inquiry intending an answer, that for an offence during the night time, the owner, and for that during the day time, the watchman (etc is responsible) the Author states in regard to the watchman 20

Yājñavalkya Verses 164-165

Yatha, 'in the condition, without any scars etc., and identically of the particular number, the cattle as by the owner may have been made over in the morning to the watchman, those the cowherd should return over in the evening. During the day time, for those which may have died owing to his mistake or may have vanished owing to (their) being taken away, he should be made to pay by regard to the price, if wages had been stipulated &c fixed for him. Even for those taken away by robbers, etc when their restoration has been found to be impossible, their price &c the amount of money also has been laid down &c has been declared to be given. 25 30

1 Mr Mandlik reads twelve instead of thirteen अत्रयोदशतय. This expression has both interpreted as 12½ see note 1 on p 1180 below

2 Mr Mandlik translates thus and he should restore the thing (i.e. the animal) to the owner. Apparently the word *gar* in the text of Yājñavalkya has been rendered as 'the thing' & 'the animal'. This however, would not suit the context as the rule laid down in this verse is applicable when the beast is lost

- If the cattle die or are taken away by robbers through his fault, for the watchman of the beasts, the fine is thirteen *panas*¹ less by a half i.e. twelve *panas* and a half more, has been ordained to be taken by the King himself. By the use of the first *cha*, are included those which have fallen, others than dogs. By the use of the word *tu*, 'however', the Author excludes the punishment for the herdsman who reports a forcible taking away by robbers, tiger, and the like. That has been declared by *Manu* and *Nārada*². "But for an animal forcibly taken away by robbers, the herdsman shall not be made to pay, provided he informed the owner at a proper time and place. *Brhaspati* also. "When he does not restore nor complain and report to the owner, the herdsman is responsible for the fault, and is also liable for a fine (to be paid) to the King. By the second use of *cha*, the Author removes the doubt about any rule of option owing to a simultaneity of punishments (164-165)

Sûlapāni

Yājñavalkya Verse 165

- When the beast is lost through the fault of the keeper, the fine is half by thirteen *panas* ordained for the keeper. To the owner, however, is money payment, and when the payment of money referred to in the text "if the beasts have died or been lost through mistake etc., is impossible this text is for the payment of the price (165)

- While speaking of the cattle (generally), the Author speaks about a pasture-ground for cattle

Yājñavalkya, Verse 166

- By the choice of the village, or by the authority of the king, a portion of land for the pasture ground for cattle (should be kept). The twice-born may always take from any place grass, fuel, and flowers like his own.

Mitāksharā — *Grāmechchhayā*, by the choice of the village, i.e. by the choice of the inhabitants of the village regard being had to the large or small extent of the land, or by the King's will, a cattle pasture

1 The *Varadacharya* interprets शपद्वाशरण as अवहितवशादशरण अशधिकद्वाशरण i.e. सप्तद्विदशरण taking it as an उत्तरसद्भावी कम्पधारय relying upon the *Vārha* viz. वासुकीवृक्षस्य सप्तद्विदशरण उभयतः दत्तव्यमिति. The author of the *Mitāksharā* takes it as अपाधकवशोदशरण. In regard to this the editor of the *Chowkhamba* series says in Note 4 on p. 643—ननु सप्तद्विदशरण अथवापवादितं सद्भावात्पन्नाश-द्वयस्यद्वयस्यम् ।
2. *Manu* Ch. VIII. 233

ground should be made, & some good portion of the uncultivated land should be appropriated for the pasturage¹ of kine and the like

A twice born man in the absence of grass, fuel &c. may, for the use of the cow, the (sacrificial) fire, and the Deity, take from anywhere, the grass, wood and flowers (respectively) without opposition, as if (they were) his own. But fruits, he should take from an unenclosed spot only, *vide* the text of Gautama². For the cow and the sacrificial fire, he may take as his own grass, and fuel, as well as the flowers of creepers and trees, and fruit also, if they be unenclosed.

This moreover, supposes an absence of pre occupancy, for, should a thing be occupied, property also vests by occupancy in others also besides twice born men, as has been declared by the same³ Author 'A man becomes owner by inheritance purchase partition, seizure or finding'

As for what is again said in the text⁴ 'He indeed who seizes grass, or wood or flowers or fruits without asking (permission of the owner) deserves (the punishment of) the amputation of his hand,' it applies to persons other than the twice born or where there is no distress, or implies a purpose other than that of (feeding) the cows &c.

Sūlapāni

Yajñavalkya Verse 166

At the option of the village &c of the villagers a pasture ground for the cows and the like may be made or by the wish of the king land. The twice-born may take grass water etc. from all places when there is no open forest he may take like his own from places appropriated by others (166)

Pace 112*

Here is another rule being propounded to provide for the convenience of cows and other cattle for standing, sitting &c

Yājñavalkya, Verse 167

A space of one hundred *Dhanus*⁵ in extent should be left between a village and the fields, of two hundred, for a small town, and of four hundred, for a city

1. Balambhatta notices a different reading, वृक्षान् यः for the protection of cattle

2. Ch XII 2 in Anandasrama No 28 Vol II Part I Sacred books of the East p 241

3. Ch X 31

4. Of Narada—Balambhatta Colebrooke assigns it to *Chandana* See p 90 Dig II

5. A *Dhanus*=pole of four cubits

Mitāksharâ.—The space to be left between a village and its fields should be one hundred *Dhanus* in extent on all sides, except from Village Kharvalasya, round a small town, with abundant thorny bushes growing in continuity round it, the extent of the space should be two hundred Nagarasya, round a city, with the concourse of an immense population, the intervening space should be, by measurement, more than four hundred *Dhanus*.

Thus ends the chapter on

‘Disputes between the Owners & Keepers of cattle.’

10

Vīramitrodaya

Indeed, when the (whole) region is absorbed by the agricultural fields, how can there be a provision for the cows to feed or to roam about, in all cases there being a likelihood of punishment? So the Author says

Yājñavalkya Verses 166, 167

15 *Gopachāro*, ‘the pasture ground for cows, i. e. an uncultivated portion of land intended for the cows to roam about, should be determined upon by the residents of the village or by the king at their option by regard to the vastness or smallness of the land. The twice born, moreover, may take grass, wood, and flowers from all quarters, even from the portions of lands accepted as donations, *samut*, ‘like one’s own, i. e. like from his own field’.

20 Having thus treated of the feeding of the cows, the Author provides for their roaming about viz. *Dhanus samanti*—‘a hundred *dhanus* etc. A measure of four hands is a *dhanus*, a hundred of that in extent i. e. expanse, on all the four quarters, land to be left out in the ground intervening between the village and the fields. *Kharvata*, a place better than a village, but inferior to a town. For that, the intervening space should be two hundred *dhanus*, and for a town, four hundred *dhanus* space should be left between the fields. Moreover, that portion of the ground is utilised for the cattle to roam about and rest, therefore there is no penalty. This is the substance. (166–167).

Sūlapāni

Yājñavalkya, Verse 167

35 Four hands make a *dhanus*; a hundred of it make a *prastāra*. The intervening space between a village and the fields should be left on all sides for the cattle to roam. For a village of the type of *kharvata*, where there are many artisans and agriculturists twice the above. For a town, four times (167).

CHAPTER XI

Of Sale without Ownership

Now the Author introduces the chapter from Vyākṛānta called
 "Sale without Ownership. The characteristics of the same have
 been mentioned by Narada¹ "When a thing kept as a deposit or
 "the property of a stranger lost (by him) and found (by another
 "man), or stolen articles are sold behind his back, it should be
 "considered as a sale (effected) by another than the (rightful) owner."

In such a case what should be done? So the Author says

Yājñavalkya, Verse 168

The owner can recover his own (property) sold by a stranger, the
 blame would be of the buyer if he buys not publicly. If he purchases from
 a very low man in secret at a very low price, and at an unusual time, he
 is (considered) a thief

Mitākshara —Swam has *own* i.e. property belonging to himself, 15
anyavikṛitam sold by a stranger, i.e. sold by one not the owner, if he
 sees it then he can recover, *labheta*, i.e. he should take it. Since the
 element of ownership is absent in the sale by one who was not the
 true owner. The expression 'things sold' has been used to indicate
 by implication 'things given or deposited'. For these transactions 20
 are also similar (in nature) to a sale by one not the owner. And
 hence has it been said² 'A sale, a gift, or a pledge made without
 'ownership should be rescinded'.

The purchaser moreover becomes blameworthy if he buys *aprakāṣite*,
 not publicly, i.e. if he makes the purchase in secret. So if from a very 25
 low man, *hmat*, i.e. from one who cannot account for the acquisition of
 the thing by him *rahasi*, in secret, i.e. in a lonely place not ordinarily
 resorted to, *hnamūlyena*, at a very low price, i.e. at a price lower than
 the original (price) of the thing itself and *vela hane*, at an unusual
 time i.e. at a time which is other than the proper time (if) he make 30
 a purchase, (e.g.) at night or such other time then in such a case,
 the purchaser is (considered) a thief *taskarah*, i.e. becomes liable to
 punishment like a thief. As has been said³ 'When a thing which
 "had been sold by another than the owner, has been recovered by

"the owner, he may keep it One purchasing openly is blameless ;
"but a clandestine purchase is equivalent to a theft by the purchaser"

Sulapāni

Yājñavalkya, Verse 168

- 5 If one's own property be sold by another without his consent the former owner should get it back the blame would be of the purchaser, if the purchase be made not in the open So also, *hînuḥ* 'from a very low man, such as a *chandîla* or the like, who is not likely to have the amount and even from one who is likely to have the (required) amount
10 if purchased in a deserted place, for a very small price and at a time not proper for a purchase, one may get back the sold commodity from the hands of the purchaser and the purchaser also is regarded as a thief (168)

What should be done by the purchaser when charged by the owner ? So the Author says



Yājñavalkya, Verse 169

Having found goods lost or stolen he should cause the taker to be apprehended If time and place prevent (it), he shall himself apprehend and hand him over

- 20 Mîtākṣharâ —A thing lost or stolen, belonging to another having got by sale or otherwise (the purchaser) should
Shrikara's interpretation *cause the robber to be apprehended, bartâram naram grabayet*, by persons expert in detecting thieves, for his own exoneration as well as for the enforcement of the king's penalty If, however he has gone to an unknown region or is dead
25 in course of time and it is not possible to get at the original thief, then even without producing the seller, he should himself make over that thing to the owner who had lost it And he is discharged from all liability by doing so much Thus has (this text) been explained
by the venerable Shrikara

- 30 But it is improper. For, having regard to the text: 'When the "seller is pointed out there is exoneration' there would be the fault of repetition So this text is being explained otherwise

The portion of the text "(having found) goods sold, stolen &c." is a course prescribed for the owner of the lost thing (Thus) *Having found*

āsādyā, i e recognised a thing while the same is in the hands of the purchaser, which belonged to himself, and which was either lost or stolen, he should cause the taker, hartāram, i e the seller to be appre-

PAGE 113* hended by the police or others. If time and place present, deśakālatipattau i e if there is (danger of) 5

waste of time, i e if there is danger of his running away even before the time a complaint is made to the police on account of their not being near, he shall himself apprehend, swayameva grhītwā, and hand over, samarpayet to them

Sūlapāni

10

Yājñavalkya, Verse 169

The owner also having obtained naṣṭapahṛītam 'the property which was lost or taken away,' should cause the person taking it, to be arrested by the hands of the officers appointed for recovering stolen property. When the officers for recovering stolen property are not available at the place, and it is impossible to protect the property until the time of their being brought over, then he should himself take it and make over' (169)

15

What should be done after the robber is apprehended? So the Author says

Yājñavalkya, Verse 170

20

When the seller is pointed out there is exoneration. The owner receives his thing, the king, the fine, and the buyer his price back from him who sold it

Mitākṣharā —If such a buyer, when apprehended says 'I have not stolen it, but I have purchased it from another', then of him i e of the buyer, vikreīdarsanamātreṇa suddhīḥ there is exoneration merely by pointing out the seller. And then he will not be charged (as a party defendant), but the suit will proceed between the seller pointed out by him and the owner who had lost the thing. As says Brhaspati² 'When the original taker is produced, the buyer should in no case be sued. But a suit is ordained between the original taker and the owner who had lost the thing.' In that suit if it is found that a sale was made by one who was not the owner then the man who sold, vikreīd,

25

30

1 समायत् is obviously not a good reading

2 See Rajasambhāṭi p 284 ll 9 11

i. e. the seller, of it, *tasya*, i. e. of the thing lost or stolen, such as a cow &c,—from him the *owner* i. e. the one who had lost the thing will get back his *thing*, *drawyam*, *arpascha*, and the *fine* also, a fine proportionate to the (degree of) offence, and *kretā cha*, the *buyer* also, will
5 obtain *mūlyam*, the *price*, (paid by him).

If, however, he happens to have gone to another (part of the) country, then time should be allowed for his production, regard being had to the number of *Yojanas*¹ (lying between) *vide* the text² “*L*ather the purchase should be made in open (market), or the
10 “original seller should be made over. In such a case, time should be “given to him (i. e. the buyer) for the production of the original “seller according to (the distance of) the road.” When, however, he is not able to produce the original seller on account of his not knowing the place (where he has gone), then he becomes exonerated
15 only upon justifying the purchase, *vide* the text³ “If the seller “cannot be produced, the buyer should be made to justify the “purchase.” When, again, he does not justify the purchase either by (the testimony of) witnesses or by an ordeal, nor does he point out the original seller, then he himself becomes liable to punishment,
20 *vide* the text of *Mān*⁴: ‘The defendant not pointing out the original “seller, nor justifying the purchase, should be ordered to pay the “amount to the claimant as claimed by him, and also to pay a fine.”

Sūlapāni

Yājñavalkya, Verse 170

25 Of the purchaser, the exoneration becomes established at the appearance of the seller. This is in regard to an unopen purchase. As says *Bṛhaspati* ‘Either the purchase should be made in open, or the “original should be made over. Time also should be given for the production of the original by regard to the extent of the distance.’ ‘Original,
30 i. e. the seller, the original owner, should take the property. In the case of a purchase not in the open the king shall recover a penalty from the purchaser. The purchaser should recover the price from the seller.

1 A *Yojana* is 4 *kos* = 8 miles

2 Of *Katyāyana* verse 113. *Bāṇmīlatta*

3 Of *Katyāyana* verse 128. *Bāṇmīlatta*

4 Not found in *Mān*. The Author of *Mayukha* and others assign it to *Katīyāna*, verse 619

If a purchase be made in the presence of an assemblage of tradesmen, it need not be paid over to the owner either. So says Marīchi¹ "What was purchased in the presence of an assemblage of tradesmen or was known to the king's officers, what was purchased from one whose whereabouts are not known, or where the seller is dead in all these cases the owner should pay half the price and get back his own property. In such a case under the law, half of both is taken away. For a purchase from one who is not known there is a fault, as also in keeping it" (170)

It has been said that "The owner can recover his own (when) sold by a stranger." What should be done by one who wishes to recover it? So the Author says

Yājñavalkya Verse 171

Proof of a thing lost must be made by the evidence of the source of the acquisition, or of possession, otherwise, on failure of proof by him he should be made to pay the king a fine equal to the fifth part

Mitākshara — Āgama, by (the proof of) the source of acquisition, e.g. by inheritance, purchase or the like or also upabhoga, by possession, & e.g. by proof thereof, e.g. "This was my property and the same was lost and recovered &c" must be made bhāvyam & established by the owner of it. Anyathā otherwise, & e.g. if the owner do not make out (his case), pañchabandho a fifth part, & e.g. a fifth portion of the lost thing, should be paid by the owner of the lost thing as fine to the king

Here moreover, the order² (of proof) should be as follows. The original owner should prove the thing (claimed to be) lost as being his. Then the purchaser, in order to obviate the charge of theft, as also that he may get (back) the price (paid by him) should produce the seller. If, however, he is unable to produce him then for exonerating himself from any charge he should justify the purchase, and make over the thing (which was) lost to the owner

Vīramitrodaya

Now begins the portion of Vyavahara known as Sale without Ownership

Yājñavalkya Verses 168-169-170-171

His own property sold by another who was not the owner, the owner gets back from the purchaser, as a sale by one not the owner

1 To the same effect is Brhaspati see Ch XIII 7-9

2 See Katyayana verses 613, 614 Apararka p 777

cannot invest the purchaser with the right of ownership. The purchaser, moreover, when the purchase has not been made openly, would be guilty of a fault which will bring on punishment. For an open purchase, however, there would be no penalty, *i.e.* the text of

5 *Manu*¹ "If the original cannot be produced, the purchase being open, "the buyer is exculpated and should not be punished, and be let off "by the King, but the (original) owner who lost the property shall "get it back

Similarly, *hundi*, 'from a very low person, as to whom there could

10 be no possibility of the right of ownership of the article being in him. Also *rahaḥ*, 'in secret, in a lonely place, and *hinamūḷye* 'at a very low price, for the payment of a comparatively small price, for such a purchase the purchaser should be punished as a thief. By the use of the word *cha*, are included sales by slaves and the like. That has been stated by

15 *Nārada*² 'One purchasing from a dependent not authorised by the owner, "or from a disreputable individual, in secret, at a very low price, at an "improper time, incurs liability for the same offence (168)

Of the owner of the lost property, when the article which was taken away was found by the owner, the purchaser who had got it by purchase,

20 when charged by the owner, should cause the person who had taken it away, to be arrested by the officers of the state or the like. So says *Nārada*³ "The purchaser should not conceal the source from which "he obtained it, he becomes exonerated by (pointing out) the source "of it. In case of prevarication, he becomes equally guilty, and incurs

25 'the entire penalty for it (the offence)'. 'In case of prevarication, *i.e.* for concealing the origin (of his acquisition). If time and the place do not permit and in the absence of the state officers or the like, when charged by the owner, the purchaser may himself hand over the seller to the owner (169)

30 Here the reason *vikretā darsanti* 'by pointing out the seller, *i.e.* by pointing (him) out to the owner, there is 'exoneration, *suddhiḥ*, of the purchaser, *i.e.* absence of the guilt inducing a penalty. The word *cha*, 'and', has the sense of *tu*, 'however'

Thus *vikretā*⁴ the seller, *i.e.* of that article—since *tasmāt*, 'from him, *i.e.* from the one pointed out by the purchaser, *sakṣimāno* 'the owner, *dṛṣṭvā*, 'the article *i.e.* that which was the subject matter of the purchase, *kr̥tṛḥ*, 'the purchaser also, its price, and the King also obtains the penalty in accordance with the (magnitude of the) guilt (170)

1 Ch VIII 203

2 Ch VII 3

3 Ch VII 4 for अग्र्ये the print reads अग्र्य—which is correct and has been adopted in the translation

It has been stated (above) that he obtains. There, if the right of ownership is established by the owner, then it would be so the Author says, *Āgamena*, 'by the source etc. The lost property, should be established to be of his ownership by (the proof of) the source of his acquisition such as acceptance as a donation etc. or by (the proof of) possession, or by any other than these: i.e. by other means of proof 5

Tena, 'by him, i.e. by the owner of the lost property, if there the right of ownership is not established, *pañcabandhah*, 'a fifth part, i.e. a penalty equal to a fifth portion should be levied by the king. In some books the reading is *pañchamāmsah*. When the reading is 'to the king, 10 in the dative case-ending, the supplement is 'should be given.

Here, this is the result. An article sold by one not the owner, should be established by the owner to be of his ownership at that time. By the purchaser also, an open purchase should be established for immunity from the punishment by the king, and to the owner also 15 must be pointed out by him the seller. From him he should recover back his own purchase money, and should make over the article under purchase to the owner and cause a penalty to be paid to the king. In the case of an impossibility to produce him, however, then not the article (itself) to the owner, but the entirety or half (of the price) must he pay to the owner. That has been stated by *Katyāyana*². 'Should the 20 "owner of the lost article establish it as his own by (the evidence of) his "kinsmen and by proving that it was neither given, abandoned, or sold "the owner gets his own back.

*Bṛhaspati*³. "When a purchase was made before an assembly 25 'of merchants, and was known to the king's officers, but was purchased 'from a person of unknown habitation, or where the seller is dead, the "owner, upon paying half the price may recover his own property.

It may be said that it has been stated before "If the original "cannot be produced, and the subsequent text is "when the seller is 30 'in a foreign country, but thus there is no contradiction (168-171).

Sūlapani

Yājñavalkya Verse 171

Āgamena 'by the source of acquisition' such as a gift or other means of acquiring wealth the owner of the lost property should establish (his title to) the lost property *Atanyathā*. Otherwise: i.e. if the owner of the lost property does not prove, a fifth portion should be taken by the king as penalty (171) 30

1 यज्ञोपवीतं *Yajñopavīta* admits other means. Both *Visharapa* and *Aparārka*, however, construe *atanyathā* as अत्र प्रकृतद्वयव्याप्यमिति यद्वत् etc.—and el. it out any other means of proof see *Aparārka* p. 776.

The Author mentions a rule regarding one who shields a robber
Yājñavalkya, Verse 172

He who receives from the hand of another, a thing stolen or lost without informing the king, shall be fined ninety six panas

- 5 Mitāksharā —*Hitam pranashitam, a thing stolen or lost, and lying in the possession of the thief &c, he who takes it back forcibly or by similar means saying 'this was his stolen my thing', without informing the king, such a one shall be fined six and ninety panas, as he becomes guilty by shielding the thief*

PAGE 114*

- 10 Viramitrodaya

For one who not being the owner and sells, for a purchaser from him, and for the owner who shields these, the Author states a penalty

Yājñavalkya Verse 172

- 15 Should be punished By the use of the word *tu*, 'however, when information is given, the Author cuts off the penalty (172)

Sūlapāni

Yājñavalkya, Verse 172

- 20 *Hitam pranashitam na, 'A thing which was either stolen or was lost' if one takes it from the hand of the thief etc saying this is mine, without informing the king such a one should be punished, as he becomes guilty of shielding the thief (172)*

The Author mentions a rule regarding a thing recovered by the king's officers

Yājñavalkya, Verse 173

- 25 A thing which was lost or stolen, and which had been recovered by the customs officers or by the local watchmen the owner may take away within one year, (and) after it, the king

- 30 Mitāksharā:—When however, a thing lost or stolen, has been produced before the king by the officers of customs, or by the watchmen of the place, then, if the owner of the lost thing appear *samvat sarādarvāk within the period of one year*, he shall get the thing (back) After the lapse of one year, however, the king shall take it

- The king also should cause a proclamation to be made among the people, about the thing brought by his officers, and preserve the same for one year As 'saye Gautama' 'Those who find lost (pro

"perty) the owner of which is not known shall announce it to the king. The king shall cause it to be proclaimed and hold it in his custody for a year. As for the other rule stated by Manu¹ Property the owner of which has disappeared the king shall cause to be preserved as a deposit for three years within the period of three years the owner may claim it after that the king may take it, it refers to the property of a Brahmana who is more over well versed in the Veda and is of good conduct. The deduction of a sixth part has been stated by the same Author². Now the king remembering the duty of good men may take one-sixth of property lost and afterwards found or a tenth or at least a twelfth. The sixth and other parts should be understood to be recovered (second in the thing is claimed) during the third second or the first year respectively³. This moreover has been explained before

Sulapani

Yājñavalkya Verse 173

Property which was lost being taken away by thieves etc and was recovered by the customs officers etc that the owner may take within one year. Afterwards however the king. As to what had been stated by Manu⁴ and others viz Property the owner of which has disappeared the king should cause to be preserved as a deposit for three years that has reference to gold and other durable property (173)

The Author mentions an exception to the rule stated by Manu regarding the retaining of a sixth or other part in the case of particular chattels

Yājñavalkya Verse 174

The owner of a beast having single hoofs should pay four paise for a horse and two each for a buffalo camel or a cow, and a fourth each for a goat or a sheep

Mitakshara —Ekasapha an animal having a single hoof e.g. a horse &c if lost and found again its owner should pay the king as a fee for its protection four panas. Manushe for men i.e. if the thing be a human being five panas. Ajavike for a goat or a sheep however one-fourth (of a pana) for each. For a buffalo a camel or a cow as

1 Ch VIII 30

2 Manu Ch VIII 33

3 Balabhattacharya explains that the order here referred to is inversely to the original enumeration so that for the first year 1/3rd part 2nd year 1/10th and for the third year 1/12th part may be taken

charges for protection, he should pay two *panas* for each head. Thus is the rule to be construed in reference to all. Although the goat and the sheep are mentioned together in a conjunct compound *ajāvīkam*, still by the force of the repetition in the expression 'one-fourth one-fourth each' the meaning deducible is that it refers to each individually.

Here ends the chapter on "Sale by One Not the Owner"

Vīramitrodaya

If the lost article is not brought back by the owner, but on the other hand by the king's officers, in such a case the Author states the adjustment.

Yājñavalkya, Verses 173-174

By the customs officers, or by the local watchmen, *āhīram*, 'recovered', property which was lost was recovered, that should be preserved by the king for one year, within that period if the owner who had lost it establishes it as his, he shall take it and get it. *Pirato*, 'after it', i.e. after a year, the article for which the right of ownership of (any) other has not been established, the king may take (173).

The Author mentions the charges for the preservation of lost property.

Ehasaphi, 'for animals with one hoof, such as horses and the like, on the property being lost, four *panas*, to the king, shall the owner of the lost thing pay. When, moreover, the lost article is a human being, five *panas*. For supervision in connection with the buffaloes and cows, two for each, and for goat and sheep i.e. for a he goat and a ram, one should pay a quarter of *pana* for each.

'The lost property which was recovered, the king shall (keep as a) deposit for three years. Before (the spring of) three years, the owner may take, afterwards the king may take. This text of Manu', however has a reference to the (property of a) Brahmana learned in the Vedas and of illustrious character, the present text is in regard to cases other than that, and thus there is no contradiction (173-174).

Thus ends the chapter on Sale without Ownership

Sūlapani

Yājñavalkya Verse 174

Ekaśaphi 'in regard to one hoofed animals such as the horse etc., when lost and recovered by the king one should pay four *panas* (to the king) for its preservation (174).

Thus ends the Chapter on Sale without Ownership

CHAPTER XII

Of the Resumption of Gifts

Now is being expounded the Chapter of Law called Gifts which has obtained a twofold designation¹ the Resumption of a gift or Non resumption of a gift, according as the parties concerned resort to ways which are proper or improper. Its characteristics have been stated by Nārada² 'When a man wishes to take back a thing which he has not properly bestowed it is called a resumption of gifts, a title of law' That title of law wherein having bestowed a chattel *not properly*, *asamyak*, i.e. by means not laid down as proper, a man wishes to recover it back, (that title) is called 'Resumption of Gifts' i.e. that transaction of gift where there is resumption of that which had been given. And by having resort to legally prescribed methods its converse in the same title at law comes to be known as Non-resumption of gifts. That title at law called the law of gifts in which there is non-resumption or non-retaking of what had been given, is called the 'Non-resumption of gifts'. That moreover is fourfold, having regard to its division into what may be given and what may not be given. As says Nārada³ 'What may be given, and what not valid gifts and invalid gifts, thus the law of gifts is declared (to be) fourfold in judicial affairs'. There, by 'What may be given', *deyam* is expressed to be that which can be a fit subject matter for an unforbidden transaction of gift. By 'What may not be given' *adeyam* is indicated that which is unfit to be given either on account of its being not one's own property or its being prohibited (as a thing to be given). That on the other hand which had been given by one in full possession of his faculties and which cannot be revoked is called a valid gift 'Dattam'. And 'an invalid gift' *Adattam* is described to be that which may be taken back. With a view to describe this in brief the Author says

Yājñavalkya, Verse 175

One's property may be given, without detriment to the family

Mitākshara --Swam one's property i.e. his own *kutumbāvirodhena* without detriment to the family i.e. without impediment to the family i.e. so much only should be given as may remain after (providing for) the maintenance of the family. Since its maintenance is a necessity

For says Manu¹ 'Aged parents, a chaste wife, and an infant
"son, should be maintained even by doing a hundred misdeeds,"
so said Manu 'Without detriment to the family"—by this the
Author points out one class of things which may not be given
5 'One's property one may give—by this also, the unendowable
character of the five kinds of property², the Anvṛtita² and Yichitaka
deposits as well as a pledge, a joint property, and a Nikshepa deposit
has been indicated by the method of negative³ reasoning. As to
the eightfold character of things not liable to be given which has
10 been mentioned by Nārada⁴ 'An Anvṛtita deposit a Yichitaka, a
pledge a joint property, a deposit, a son, a wife the entire property
'of one who has offspring (1) These have been declared by the
'revered sages as inalienable even in times of extreme distress, as
'also that which had been promised to another (5) ' This text only
15 intends things which are inalienable, and not as indicating an absence
of the right of ownership as the right of ownership exists over a son
a wife, the entire property and that which had been promised. The
nature of Anvṛtita and the rest has been already explained before⁵

Sūtapanti

Yājñavalkya Verse 175

20 When there is no wife or son one may give what is his without
detriment to (the interests of) the family. When however sons etc
exist the entirety should not be given. What has been promised to one
should not be given to another.

25 In a period of adversity sons etc may be given so says Katyāyana⁶
Father in a sale or in a gift must not be given when unwilling. In
times of adversity however a gift or even a sale may be.

Unwilling i.e. the sons and the rest. Even there an only son must
not be given vide the text of Vasistha⁷— Never however should one
30 give an only son. (175)

1 Not found in the printed edition of Manu.

2 See pages 840-841 above for an explanation of these terms as given by
Vijñāneshvara himself.

3 The ऋणा method of reasoning: i.e. by an opposite way. See note 3
page 707 above for a fuller explanation of this term and also of the corresponding
term ऋण. The meaning is that by saying that one who gives what is his
own property a necessary implication is raised against the gift of things
which are not held in the right of full ownership: i.e. over which the donor has
only a partial right. 4 Ch. IV 45. 5 i.e. on page 101 text and p 840 tr above.

6 Verses 638-639. 7 Ch. XI 3.

By¹ reason of the text "One's property he may give", an occasion might arise for the giving away of a wife and a son and the like. With a view to obviate this, the Author says

Yājñavalkya, Verse 176

Except a wife and a son Nor, when there is progeny his entire property, as also what had been promised to another 5

Mitāksharā —Dārasutādrite² except a wife and a son, i.e. excluding the wife and the son, he should give his own property; and not a wife or a son. This is the meaning. Similarly, when the son grandson and similar *anvaya*, progeny, exist, the entire property he should not give, *vide* the text³ "Having begotten sons, he should 'duly initiate them, and provide for the maintenance of these'". So also, gold &c. *anyasmai pratisrutam*, when promised (to be given) to another, should not be given to any other. 10

Having thus mentioned property which may be given, with the exception of a wife and a son, the Author mentions in that context, the rule that property which is not alienable should be accepted by the donee in public 15

Yājñavalkya, Verse 176 (1)

'Let the acceptance be public, especially of immovable property' 20

Mitāksharā —Taking over is *prabgrahah*, acceptance. That should be made *prakāśah* in public with a view to obviate any dispute. And *sthāwarasya cha viśeṣatāh* especially of the immovable, the acceptance should be made only in public. As it is not possible to prove its possession (by the donee) as can be done in the case of gold and other 25
movables.

1 The right of ownership being undefined

2 See *Anigada vs Sumappa* 33 Bom 669 at pp 674 687 where Chandavarkar J has discussed this passage and its bearing upon the relative rights and positions of a son and a father in a Mitākshara family

3 Of Manu—Balamharta

4 See *Haryasa vs Anant* 4 Bom H O R A O J 31 at p 34 and also *Kakdas vs Kashya* 1st 11 I A 218 at p 210 where this passage has been translated by the court

Having thus referred to a subject which only arose incidentally, the Author proceeds further with the subject under discussion, and says

Yājñavalkya, Verse 176 (2)

Whatever is promised (to be given) shall be given: Having once given (it), let him not resume (it).

Mitākṣharā:—Deyam pratīśrutam chaiva, whatever has been promised to any one as a religious charity, must necessarily be given to him, if the other does not swerve from (the path of) religion. If, however, he swerve, then it should not be given. As Gautama³ has stated: “Even if he may have promised, he should not give it to one who has irreligious associations”.

Datwā nāpahareṭ punah, what had been given, let him not resume it. From this it follows that whatever has been completely given according to law, should not be resumed in (the case of) all the seven classes (of valid gifts). But should be confirmed in that condition; but also that, what had been given in an illegal manner must be resumed in (the case of) all the sixteen kinds of invalid gifts.

Nārada⁴ also having premised that “Valid gifts are of seven kinds, and invalid gifts of sixteen kinds” has dealt with the characteristics of valid and invalid gifts thus: “The price paid for merchandise, wages, (a present offered) for an amusement, (a gift made) from affection, or from gratitude, or as a woman’s Śulka, and a respectful gift, are the seven kinds of valid gifts” (8).

Invalid gifts are the following (sixteen): “What has been given by one under the influence of fear, anger, sorrow, sudden excitement, or pain; or as a bribe, or in jest, or fraudulently, under false

1 See *Gulabham vs Uderam*, 36 Bom. 29 at p. 35, where Chandavarkar J. has translated this passage.

2. This translation differs from that given by Chandavarkar J. in 36 Bom at p. 35. The translation given there is obviously not in conformity with the text of the Mitākṣharā, which makes it a condition precedent for the completion of the gift, that the donee should not swerve from religion.

3 Ch. IV. 23.

4 Ch. IV. 8-11 See *Haryuam vs Naran*, 4 Bom. H. C. R. A. C. J. at p. 33.

5. See p. 1135 note 4

"pretences (9); Or by a child, or by a fool, or by a person not his own master, or by one distressed, or by one intoxicated, or by one insane; or in consideration of a reward thinking 'This man will 'do me some service' (10); and also that which was given to an unworthy person thought to be worthy, or for an unlawful purpose; 5
"whatever gift has been made through ignorance (of real facts) is considered as an invalid gift."

The meaning is this: What has been paid as "the price for merchandise" *i. e.* a thing bought. "Wages" *i. e.* the salary paid to one who had done work. "For amusement" *i. e.* given to the bards, 10
singers and the like. "From affection" *i. e.* given to daughters, sons, and the like. "From gratitude" *i. e.* to one who has conferred any obligation; given by way of repaying the obligation. "A woman's Sūka" *i. e.* that which was given to the relations of a damsel for (bringing about the) marriage. And "a respectful gift" *i. e.* what 15
was given and the result of which is not observed (in this world). These seven kinds of gifts are valid gifts, and must not be resumed.

"Through fear", what was given to the keepers of prisoners &c.
"Under the influence of anger" *i. e.* what was given to another (as an inducement) for removing his enmity towards sons and the like. 20
What was given in pangs of grief caused by the separation of a son or a similar cause. "By way of a bribe" *i. e.* given to persons in

1. *i. e.* not having tangible results in this world.

2. For a lucid explanation of the quotation from Nārada see Asahāya's commentary of Nārada on this passage and translated by Dr. Jolly at pp. 129-130 (notes) of Vol. XXXIII of the Sacred Books of the East.

3. चदिमदुद्दि—This term is indicative of persons of dangerous character, such as rogues, ruffians &c. Asahāya explains it as follows—"e.g. if an honest man promises one hundred drachmas to a ruffian who addresses him, while he is passing through a forest, with the words, 'If thou givest me one hundred drachmas, thou shalt live. Otherwise thou shalt die.'"

Bālsmbhaṣṭa suggests as an example, 'gifts' promised or given to the jail officers &c.

4. See *Shri Sitaram Pandit vs Shri Harihar Pandit* 35 Bom. 169 at p. 180 per Chandavarkar J. where this passage has been translated differently thus: "Something paid to a person bound to do an act, with the object of removing an obstacle to the performance of his duty." While Vijnāneśvara's explanation obviously refers to a gift made to a person in authority, with a view to removing all obstructions to the successful termination of the matter under consideration. To the same effect is Asahāya.

- authority for the removal of obstruction to (one's) business.
 "In jest" i.e. what has been, as a fun, given. Even (when) one
 man gives his own property to another and that other also gives his
 to him. This is "a fraudulent gift." "Under a false pretence" i.e.
 5 (where) intending to give one hundred, he stipulates for a thousand,
 and gives. "By a child" i.e. by one who has not attained the age
 of sixteen. "By a fool" i.e. by one who is ignorant of the popular
 usage. "By one who is not his own master" e.g. by a son, a slave,
 or the like. "By one distressed" e.g. by one diseased &c. "By one
 10 "intoxicated" i.e. by one intoxicated by some intoxicant. "By one
 "insane" i.e. by one who is overpowered by an insanity such as that
 brought on by air &c. "Given in expectation of a return" e.g. (where a
 gift is made in the expectation that) 'he will bring about the accomplish-
 "ment of my object.' Given to a man who is not versed in (all) the four
 15 Vedas on his representing that he was versed in the four Vedas. Given
 to one, who having obtained a gift on his representing that he would
 perform a sacrifice, but who appropriates it in gambling and similar
 other acts. Gifts of these sixteen kinds as enumerated above are
 invalid even if they were (completely) made, since these can be
 20 resumed.

The invalidity of a gift made by 'one distressed', attaches to
 such as are those other than relating to religious purposes. Since
Kātyāyana has observed: "If a gift¹ be promised by a person whether
 ' in health or in distress, for a religious purpose, and he die without
 25 "making it, his son should be compelled to make it good, of this
 "there is no doubt."

Moreover, here is another text which is expressed in a concise
 form, but which is common to all (kinds of) disputes. Says *Mann*²
 ' A fraudulent pledge or sale, a fraudulent gift, acceptance, and any

1 See *Ghahabai vs Uderam* 30 Bom. 29 at p. 35. Where *Chandavarkar J.* observes, "The word son is here merely illustrative and stands for any one who inherits or takes the promisor's property. These are merely, not mandatory texts, but the principle underlying them is that where a Hindu who has directed a trust of his property for a religious purpose dies before giving effect to it, Hindu Law authorises his heir to take steps for carrying out his directions after recovering the property from a trespasser."

2 Ch. VIII 165

"transaction where he detects fraud, he (i.e. the judge) shall annul
"the whole of such (transaction)" *Yoga* means fraud. The meaning
is, that by every kind of fraud intended to be practised (in future),
(if) the transaction of pledge, sale, gift or acceptance &c were
brought about, upon the discovery of that fraud, these transactions 5
of sale &c should be declared null and void. For him, moreover,
who accepts any of the sixteen invalid gifts and also for him who
bestows any of the seven kinds which ought not to be given a penalty
has been declared by *Nārada*¹. "He who accepts an invalid gift
"through avarice, as also he who bestows one which ought not to 10
"be given the donor of the unendowable thing deserves punishment,
"as also the acceptor of the invalid gift."

Here ends the chapter on the Resumption of Gifts

Vīramitrodaya

Now, the chapter of *Vyavahāra* known as non-delivery of gifts. 15
"Now, what may be given, and what not, valid gifts, and also invalid
"gifts, thus the law of gifts is declared to be fourfold in judicial matters,
the Author expounds this text of *Nārada*².

Yājñavalkya, Verses 175-176

Swam 'one's, i.e. of one's own property, excepting the wife and 20
the son, without detriment to the family, i.e. the family which must
necessarily be maintained, *deyam* 'may be given'. The meaning is
that what may remain after (providing for) the maintenance of the
family may be given.

Having, thus stated what may be given, the Author states what 25
may not be given. When there is progeny i.e. when the son, grand-
son and other descendants exist, *sarvaswam*, 'the entire property',
should not be given. *Anyasmai yatpratistutam*, 'what has been
promised to another, i.e. what has been agreed to be given, that should
not be given to one in excess of that. By the use of the word *cha*, 30
'and also', are included other things not to be given stated by other
Rishis. So also *Brhaspati*³. "Common property, sons, wife, a pledge,
"the entire property, a deposit, things borrowed, and similarly what has
'been promised to another, thus the property which may not be given

"a reward, or to an unworthy man mistaken for a worthy person, or for an immoral purpose, the owner may resume the gift".

On the occasion of (a discussion as to) what may be given, the Author states the necessity of openness in the acceptance of a gift—*pratigraha* 'an acceptance' etc. With a view to obviate a dispute, an open acceptance of a gift should be made. Especially of an immovable, the acceptance must be made in the open only, as it is not possible to prove its possession by oneself as (can be done) in the case of gold and other movables.

Now the Author proceeds with the matter under consideration : What had been promised as a religious charity must necessarily be given, provided the donee does not swerve from (the path of) religion, as Gautama¹ has stated : " Even if he may have promised, he should not give it to one who has irreligious association ". What was given properly as of the aforesaid seven kinds, having once given, one should not take back. By the use of the word *cha*, 'also', it is indicated as the cumulative sense of the text, that of the sixteen kinds of invalid gifts, one may take back (175-176).

Thus in the commentary on Yājñavalkya ends the chapter on Nondelivery of gifts.

Śālapāṇi

Yājñavalkya, Verse 176

An acceptance of a gift should be known to many. *Pratigraham* 'what has been promised,' i. e. promised by word of mouth. Even there, as regards immovables in which many kinsmen are interested, should be known to the kinsmen and others. What has been promised by a word of mouth must certainly be given. One should not take back, what was once given. As says Hārīta : " By not giving what was promised, as also by cancelling a gift, one goes to various hells, also becomes born a lower animal."

Bṛhaspati² states what may not be given : " What has been given by one angry, or resenting an injury, or through inadvertence, or by one distressed, one infatuated, or extremely old or terrified, overpowered by grief, and what is given in a soft mood, these are declared as invalid gifts. What is given through desire for a reward, or to an unworthy man mistaken for a worthy person, or for an immoral purpose, the owner may resume the gift" (176).

Thus ends the Chapter on Resumption of Gifts

✱ CHAPTER XIII

Rescission of Purchase.

Now is being described the 'Rescission of Purchase' Its nature has been described by Nārada: "Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed "Rescission of Purchase" a title of law." There also the same Author² has stated that on the day on which the purchase was made, on that same day should the thing be delivered back without any change: "When a purchaser, after having purchased an article for a price, considers that he has made a bad bargain, he must, return it to the vendor on that same day in an undamaged condition" In the case of a return on the second or any subsequent day, a special rule has been mentioned by the same Sage³ "When the purchaser returns it on the second day, he shall lose a thirtieth (part) from the price; twice as much (if it be returned) on the third day; after that time, it is absolutely the purchaser's" The meaning is, that thereafter a rescission should not be made This (rule) moreover, has a reference to things perishable by use, other than seed and like other things

In the case of the purchase of seed &c, an entirely different rule prevails as to rescission. So the Author says

Yājñavalkya, Verse 177

The time (allowed) for the trial and examination of seed, metal beasts of burden jewels, females, milch-cattle, and of males is respectively, ten days, one day, five days, seven days, one month three days, and half a month

Mitāksharâ —*Byam seed*, i e the seed of paddy and other grain *ayah, metal*, such as iron &c, *wāhyah, a beast of burden*, i e a bullock and the like, *ratnam, jewel*, i e pearls, corals &c; *stree, a female*, i e a *dāsi, dohyam, milch cattle*, e g. a she-buffalo &c, *pumân, a male*, i e. a male slave

Of these, i e of the seed and the rest, the period for trial and examination should be understood to be ten days &c respectively in the order of (their) enumeration And when, while under trial and examination, there occurs a repentance on account of the badness of the thing

1 Ch IX 1

2 Ch IX 2

3 Ch IX 3

(purchased), then the sale can only be rescinded within ten days, and not later (than that period) And this is the reason of this rule

As for the text of Manu¹: "If anybody in this world after buying or selling anything, repent of his bargain, he may return or "take back that chattel within ten days", that refers to things not hable² to destruction by use, such as a house, a field, a vehicle, a bed, a seat and the like, excepting iron and the other things with regard to which the rule has been stated (as above)

Moreover, all this has a reference to what was bought without an examination What, therefore had been examined³ and then purchased after an agreement, that is not to be returned, it should not be returned to the seller That rule has been laid⁴ down thus "The (intending) purchaser shall first examine an article, & (before "purchasing it) having regard to its faults and excellences, that "which has been approved by the purchaser after a close examination "cannot afterwards be returned to the vendor"

Vīramitredaya

Now the Author expounds the chapter of Law called the Rescission of purchase which has been characterised by Narada⁵ thus

"Where a purchaser, after having purchased (an article) for a price, does not approve of it, that is termed a 'Rescission of Purchase' a title of law

Yājñavalkya, Verse 177

Up to ten days and the like is the limit for the examination of seed etc, and therefore if within that interval there is a revulsion about the bought article, then it should be returned, and not after that This is the meaning Ten days, eleven days, five days, seven days, a month, three days, half a month, is (the limit) respectively for seed, metal, beasts of burden, such as horses etc, jewels, females, such as the *dāsī* etc, milch-cattle, such as the cow etc, and of males such as servants etc.

1 Ch VIII 228

2

2. There is a mistake in the text on p 117 l 15 for भोगविनश्य read भोगविनश्य

3 The reading वक्षिणी सत् is better than वक्षिणी given in the text at l 16 and in translating the text, the former reading is adopted and not वक्षिणी Bāṣṇabhaṭṭa reads similarly, and notices वक्षिणी as a V L but apparently does not prefer it

4 By Nārada Ch IX 4

5 Ch IX 1

- "If anybody in this world after buying or selling a thing, repent
 "of his bargain, he may return or take back that chattel within ten days
 "After ten days, however, one cannot take back or compel it to be
 "taken back, one taking or returning either should be punished six
 5 "hundred by the king This text of Manu¹ has application to seeds
 only. Vide this text of Kātyāyana "Whatever article which when
 'purchased was not known to be faulty, but was afterwards discovered
 'to be so, that article of merchandise so purchased should be given
 "(back) to the owner in time, otherwise however, not 'In time i. e.
 10 within the period of inspection and test, 'Otherwise, i. e. after that All
 this, moreover, is to be observed in the case of all that was purchased
 without an examination viz since Kātyāyana has observed 'not known,
 and also the text of Brhaspati". "One should inspect a merchandise²
 "himself, and also show it carefully to others, after having accepted
 15 "after an examination and approval by many, one should not give it up

- Even before the stated period also, Narada³ states a special rule in
 regard to the return of a purchased article "When one, after
 "having purchased an article for a price, considers that he has made a
 "bad bargain, he must return it to the vendor on that same day in an
 20 "undamaged condition If he returns it on the second day, he shall lose
 "a thirtieth part from the price, twice as much if it be returned on
 'the third day After that it becomes absolutely the purchaser's "
 'After that', has a reference to the milch cattle "After having
 "purchased a thing in the market such as a milch-cattle or the like, if
 25 "out of repentance a man return it unblemished within time, he shall
 "bear a tenth part of the price, this text of Kātyāyana has reference
 to a period subsequent to the interval (allowed) for examination Or
 both of these are applicable when the purchased article has been made
 over to the purchaser Otherwise, however, "After having purchased,
 30 "if a purchaser repent of a thing which has come into his hands, a wise
 "man in such a case should give up a sixth part, and give up the bought
 "article The adjustment is to be as under this text Under the text of
 Manu viz "Not the one having a blemish, nor that which was defective,
 "not one at a distance, nor that which was concealed, an article, the

1 Ch VIII 222-223

2 Ch XVIII 3

3 वाच्य Brhaspati defines a वाच्य thus (XVIII 2) Two sorts of property are distinguished, immovable and movable when a purchase is concluded the term vendible property (वाच्य वाच्य) is applied to it " 4 Ch IX 2-3

defect of which was known at the time of the purchase, should not be returned even during the interval for inspection, since Nārada¹ has observed: "A second-hand garment which was in a ragged condition and "was soiled with dust, even if (it be) with blemishes, such an article when "once purchased, cannot thereafter be returned to the seller." (177).

Sūlpāṇi

Yājñavalkya, Verse 177

Of the seven things such as the seed etc. ten days and so on respectively is the period for test and determination of merits or demerits. If the fault is known before that, the commodity may be given back to the seller; so says Brhaspati: "Before this, if a defect results in the "article, then it should be returned to the seller, and the purchaser shall "get back the price" (177).

While treating of the (time for) inspection of milch cattle &c, the Author states the rule regarding the examination of gold and the like also

Yājñavalkya, Verse 178

Gold is not reduced in fire; in (the case of) silver it is reduced by two *palas* in a hundred; in tin by eight, (so) also in lead; in copper, five, in iron, ten.

Mitākṣharā:—While being heated in fire, gold is not reduced. Therefore, as much may have been delivered into the hands of goldsmiths for preparing a bracelet &c., so much by weight must be returned by these. Otherwise, they should be compelled to make good the loss and be punished too. In the case of silver, however, when (a quantity weighing) a hundred *palas* is being heated, two *palas* are lost; *aṣṭāu*, eight, in the case of tin, *trapuṇi*, and also lead, *śiṣe cha*, i.e. in a hundred, as necessarily follows. In the case of tin, as also of lead, while a hundred *palas* are being heated, eight *palas* lose weight. *Tāmre pañcha daśāyasi*, in copper five, in iron ten, i.e. in a hundred *palas* of copper, five *palas*, in those of iron, ten *palas* are lost. Here also 'a hundred' is indeed to be understood. As regards white-copper, as it is made out of tin and copper, a (scale of) reduction is to be determined in accordance with (the rules for) these. Artisans, causing a reduction further than this, should be punished.

Śūlapāṇi

Yājñavalkya, Verse 178

Gold, while being heated in the fire for being manufactured (into an article) is undiminished. Of silver, when a hundred are being heated two *palas* are reduced. Of tin and lead, for a hundred *palas*, eight *palas*. Copper, for a hundred *palas*, five. Thus in the case of iron, ten are reduced. In case of larger reduction, the goldsmith and the others should be compelled to pay, and should be punished also (178)

The Author mentions an increase in some cases, such as in the case of blankets &c.

Yājñavalkya, Verse 179

In the case of woolen and cotton yarns, the increase is ten *palas* in a hundred; in (cloth of) middling quality, five; and in fine quality, three *palas*.
PAGE 118*

Mitākṣharā:—In the case of woolen yarn of rough quality, from which blankets and similar things are prepared, in those cases, an increase of ten *palas* in a hundred *palas* should be understood. A similar rule should be understood in the case of cloth &c., prepared from cotton yarn; *madhye*, in (the case of cloth of) *middling quality*, i. e. in the case of cloth &c., prepared from yarn which is not very fine, the increase is five *palas* (in a hundred). In cloth prepared from fine yarn, the increase should be understood to be three *palas* in a hundred. This (rule), moreover, applies in the case of cloth, which is not washed.

Śūlapāṇi

Yājñavalkya, Verse 179

In the case of a blanket or other cloth manufactured from the ram's hair, as also of cloth woven from cotton yarn, for a hundred *palas* given for weaving, an increase of ten *palas* takes place owing to an addition of paste to the fabric. In regard to the same, when it is not too fine, nor too rough, the increase is five *palas*. For one woven out of fine yarn, three *palas* (179)

The Author mentions a special rule in regard to other articles

Yājñavalkya, Verse 180

In the case of embroidered cloth, as also in cloth made of hair, a reduction of a thirtieth part is allowed. There is no decrease, nor an increase in the case of silken cloth or those made of barks

Mītākṣharā —*Kārmikam, embroidered cloth* : *e* cloth prepared with pictures thereon. That cloth where a wheel or a *Svastika* or a like design is woven into by yarn fibres, is known as *embroidered cloth, kārmika*. That cloth, in which hair are woven into *e g* an upper garment, is a *romabaddhah cloth made of hair*. In these cases *kṣayah* a reduction, by a thirtieth part should be understood. In the case of *sūlān cloth kausēye*, *i e.* made of silk, and of those made of barks, *valkaleshucha* *i e.* of cloth prepared from barks of trees, there is neither an increase nor a reduction. But, as much as has been given to the weaver and the like for being woven into, exactly so much should be taken back.

Sūtapāni

Yājñavalkya Verse 180

Where on a woven cloth or the like, a *svastika* or a similar figure is wrought by embroidery with yarn and needle, that is (called) *Kārmika* or embroidered cloth. Where in a cloth or the like hair are woven in that is 'cloth made of hair,' *romabaddhah* (*e g*) the Nepala blanket. There a thirtieth part is the reduction. In cloth produced from silk or barks of trees, such as the fine silk cloth there is neither increase nor decrease (180).

The commodities being innumerable it is impossible to consider the rule of reduction or increase in the case of each article. So the Author mentions in general a rule for determining a decrease or an increase.

Yājñavalkya, Verse 181

When a thing has deteriorated, whatever the experts in those articles may declare after taking into consideration the place, the time, the use, and the strength or weakness, must certainly be caused to be paid.

Mītākṣharā —In the case of a hemp or a silk cloth where the article has deteriorated *nashite* *i e.* has undergone a reduction whatever the experts in those articles, *drawyānām kusalah* *i e.* those who are versed in rules of increase or decrease in the case of those articles, after having examined into the (circumstances of) *desam* place *kālam* time, *upabhogam* use, and also the *balabalam* strength or weakness, *i e.* durability or non durability of the article which has deteriorated may determine *lat asamsayam* that certainly the artisans must be made to pay.

Thus ends the Chapter on Rescission of Purchase

Vīramitrodaya

On the occasion of the (rules regarding the) examination of seeds etc., the Author states the rules for the inspection of gold and like other articles

Yājñavalkya, Verses 178, 179, 180, 181

5 *Starnam*, 'gold' i. e. of the best quality, is not reduced in fire. *Rajate*, 'in the case of silver,' *sate*, 'for a hundred,' i. e. for a measure of hundred, two *palas* become reduced in fire. In the case of tin, zinc and also lead, for a hundred *palas* eight *palas*, for a hundred of the copper *palas*, five *palas*; for a hundred *palas* of the iron, ten *palas* become
10 reduced in fire. By the use of the word *cha*, is added, the loss in the case of white-copper, produced from lead and copper in proportion to the parts of these (178)

15 In the case of blankets and cloths prepared from the rough yarn of wool or cotton, for a manufacture of a hundred yarns, the increase is ten *palas*. For one of a middling quality, i. e. not too fine, for a manufacture of a hundred *palas*, the increase is by five *palas*. In case of very fine manufactures, however, of these, for a hundred *palas*, the increase of three *palas* is accepted, i. e. regarded as proper by the
20 experts as it is besmeared with gruel etc. (179)

The cloth on which, after its manufacture, a *swastika*, wheel, or the like is embroidered with the needle, is called *Karmā* 'the embroidered cloth,' where in the case of an upper garment or the like, hair are
25 woven, that is *romabaddha*, 'cloth made of hair;' in the case of these, a thirtieth part is regarded as a proper reduction *Kanīye*, 'in the case of silken cloth,' i. e. cloth made of yarn produced from cocoon of the (silk) worm, as also in regard to cloth etc. made of barks of trees, there is no increase or decrease.

30 By the use of the word *cha*, 'and,' is included absence of an increase or decrease in the case of the pounding of wheat and many other things not mentioned (180)

In the case of those not particularly mentioned such as hemp, or linen, and other cloth, what men with special knowledge about the increase or decrease of things may declare after taking into consideration, the place, the time, the use and the strength or weakness of the
35 lost article, that must undoubtedly be paid. By the use of the word *cha*, 'and' is added that in places where a decrease is proper, a decrease may be declared (181) [178—181].

Sūlapāṇi

Yājñavalkya, Verse 181

40 When there is a doubt as to the quantity depreciated, whatever is declared by the experts after taking into account the place, the time, the strength and the weakness that certainly should be caused to be paid (181)

Thus ends the Chapter on Rescission of Purchase

CHAPTER XIV.

Breach of Contract of Service

The Author now sets out discussing another title of law known as the Breach of Contract of Service. Its nature has been described by Nārada¹ thus — "If a man has promised to render service and does not
 "render it, it is termed a Breach of Contract of Service, a title of law" 5
 Service is the performance of an order. He who undertakes it and afterwards does not do it, that title of law is known as the Breach of Contract of Service. An attendant, moreover, is of five kinds. A pupil, an apprentice, a hired servant, a man appointed to (perform) 10
a task, and a slave. Of these, the first four are known as servants or labourers. These, moreover, do pure work. Slaves moreover such as one born in the (master's) house and the like are of fifteen sorts, and perform impure service such as sweeping the house, the door, the impure places, the street, the dust-bins &c. This has been made clear 15
 by Nārada². "The sages have described in the *S'āstra* five sorts of "attendants. Among these are four sorts of labourers, and slaves (of "the fifth category) are of fifteen kinds (2) A student, an apprentice, "a hired servant, and the fourth,— a person specially appointed (to "do a thing), these are to be regarded as labourers. Slaves are those 20
 "born in the house' and the rest (3) The sages have declared that "the state of dependence is common to all these, but that their
 "respective position and income depends on their
 PAGE 119* "particular caste and occupation (4). Also there
 "are two sorts of occupations, pure³ work and 25
 "impure work. Impure work is that done by slaves. Pure work
 "is that done by labourers (5) Sweeping the house and the
 "gateway, the places where impurities are deposited, the street
 the dust bins, shampooing the secret parts of the body, gathering
 and putting away the leavings of food, ordure, and urine (6) And 30
 "lastly, rubbing the master's limbs when desired, this should be re
 "garded as impure work. All other work besides this is pure (7)"

1 Ob V 1

2 Ch V 2-7

3 As opposed to impure which is described further on in the lines following

There, by 'a student' is meant one who is desirous of studying the Vedas. 'An apprentice' is one who wishes to study the mechanical arts. He who does a work by wages is 'a hired servant'. One supervising the (work of) labourers is an officer 'specially appointed to a task'. 'Place of impurity' means a place where the leavings of the meals are thrown, such as a pit &c. 'A dust bin' is a place where the sweepings from the house, such as dust &c are stored. 'Putting away' means throwing off.

'A hired servant' (as referred to) here is of three sorts so it has been laid down. "Here, the highest class is that of a soldier, the agriculturist is the middle class, and the porters are the lowest class. "These are the three classes of hired servants."

Slaves again are¹ 'One born at his (master's) house, one purchased, one received (as a gift), one obtained by inheritance, one maintained during famine, similarly one who was pledged by his master (26); One released from a heavy debt, one acquired (as a captive) in war, one won through a wager, one who has offered himself saying 'I am thine', an apostate from asceticism, one enslaved for a stipulated period (27), One who has become a slave in order to get a maintenance, one led in by a female slave, and one self sold. Thus in all fifteen kinds of slaves are declared in 'S'āsira (28)'. Born in the (house of the master) of a female slave is one born at his (master's) house'. 'Purchased': &c by (the payment of) a price. 'Received': &c by a gift &c 'Obtained by inheritance' &c one who was a slave of the father or other ancestor. 'Maintained during famine': &c one, who during famine was saved from death in consideration of his becoming a slave. 'Pledged by his master': &c who was made a pledge upon the acceptance of money (by the master). One reduced to slavery by being freed from his debts is 'a slave released from debt. Acquired in war': &c one conquered and captured in a battle. 'Won through a wager': &c

1 By Narada Ch. V 23

2 See Narada Ch. V 26-28. It would be interesting to compare the provisions laid down here with similar provisions in Roman Law and the learned reader is referred to the same. The rules regarding the emancipation of slaves have a peculiar resemblance to those found in Roman Law.

one won after a stipulation 'In case I am defeated in this dispute, I shall become your slave.' "One who has offered himself saying 'I am "thine," i.e. one voluntarily offering himself as a slave saying 'I am thy slave.' 'An apostate from asceticism' i.e. one who has swerved from the vow of asceticism. 'Stipulated' i.e. one made a slave with the stipulation 'he shall be your slave for such a time.' 'A slave of maintenance' i.e. one who has entered into a perpetual state of slavery in lieu of maintenance. 'Led by a female slave'—a female slave (*śādanā*) i.e. one born in the house; led by her i.e. out of a fancy for her, one who has married her and entered into slavery. He who sells himself is a 'self-sold slave.' Thus these are the fifteen sorts. 5

As for the seven-fold classification stated by Manu¹ in: "One made captive under a standard, a slave for maintenance, [one born in the house, one bought, and one who is given, one inherited from ancestors, and a slave of punishment, are seven kinds of slaves", that is intended to point out that these persons are (regarded and treated as) slaves, and not with a view to limit the numbers 15

Of the attendants (mentioned before) viz. a pupil, an apprentice, a hired servant, an appointed labourer, the course of conduct for a pupil has already been stated before² viz: "Being invited (by the preceptor) indeed he ought to study, and whatever is acquired by him he should offer to him i.e. the preceptor." The rule for the specially appointed workman and the hired servant will be mentioned in the chapter on 'Payment of Wages'³ in the text: "As much work a man performs, so much will be his wages" &c. 20

With a view to state a Special Rule regarding a slave and an apprentice, the Author says

Yājñavalkya, Verse 182

One enslaved by force, and also one sold by robbers, are released (from slavery); one who saves the life of his master (is released), as also (are they released) by paying the expenses of maintenance or by paying off the debt. 25

1. Ch VIII 415.

2. See Yājñavalkya Āchārādhyāya Verse 27 p. 107.

3. See Verse 186 further on page 1234.

- Mitākṣharā — Balāt, *by force*, i.e. by a forcible obstruction, one dāsikṛtāh, *who has been made a slave*. He who being overpowered and taken away by robbers vikṛtāh, *was sold*. From the use of the word 'also', *api*, are included one 'pledged' as also one 'given'. Such a one muchyate, *is released*. If the owner do not release, then he should be caused to be released by the king. Nārada¹ also has observed "Those who are sold after having been captured by robbers, and those who are enslaved by forcible means, must be emancipated by the king. Slavery in their case is not allowed." He who saves the life of his master, when he was confronted by robbers, tigers &c,—such a one also—should be caused to be manumitted. This last is a reason for freedom from slavery common to all (kinds of) slaves since Nārada² has observed "Should (however) any one out of them save his master's life when his life is in peril, he shall be released from slavery, and shall also take a son's share³."
- 15 PAGE 120*

- The cause for the manumission of 'a hired servant' and others respectively has been mentioned. Persons who have become slaves on account of being maintained during famine, is also slaves of maintenance are released by paying off (the amount of maintenance : i.e. by offering as much money to the master as may have been consumed from the date of his enslavement. While a pledged slave and a slave of indebtedness (are released) by the redemption of these. He is released by repayment of the amount, together with interest after receiving which he was pledged by the master, or also that after paying off which he was emancipated by the master from the liability of the creditor.
- 25

- A special rule also has been stated by Nārada⁴. "One maintained during famine is released from bondage if he gives a pair of oxen." "What has been consumed during famine, cannot be repud (in value) by labour (31). A slave of maintenance is released immediately on his giving up the subsistence (36). Even a pledged slave (is released)
- 30

1 Ch. V 38 This is a general rule applicable for any kind of slave. See farther on

2 Ch. V 30 3 : i.e. a share equal to that of a son (Bāṣṇabhatti)

4 Ch. V 31 36 (1) and 32 and 33

Sûlapâni

Yājñavalkya, Verse 182

One who has been enslaved by force, or sold by robbers, should be released from bondage, one who saves his master's life, when his life is in danger, the slave for maintenance, by paying up the expenses for maintenance and also by giving maintenance in times of famine One maintained in adverse times also pays in cash, or a pair of cows (182)

There is, however, no emancipation of an apostate from asceticism; so the Author says

Yājñavalkya, Verse 183 (1)

An apostate from asceticism shall become the king's slave till death.

Mitāksharâ—*Pravrajyâ asceticism*, means a complete renunciation (of all worldly objects)—*Sannyasa* One who is an *avasitah*, *apostate*, therefrom : *e* who has swerved from it (Such a one) if he has not undergone expiation, indeed becomes a slave of the king Death alone shall terminate this (kind of) servitude In no other time can there be emancipation.

The Author mentions a rule regarding slaves having regard to (the several) orders, *Varnas*¹

Yājñavalkya, Verse 183 (2)

Slavery is in the descending order of the *Varnas*, and not in the ascending order.

Mitāksharâ—Of the *Varnas* such as the *Brâhman* and the rest a state of slavery shall exist *ânulomyena*, in the descending order Thus of a *Brâhmana*, a *Kshatriya* and the rest may become a slave, of a *Kshatriya*, the *Vaisya* and the *Sûdra*, and of a *Vaisya*, a *Sûdra*, thus the state of slavery shall operate in the descending order Of an ascetic, however, who renounces his own duties slavery is indeed ordained even in an inverse order. As says *Nârada*²: "Slavery is not ordained in the inverse order of the (four) *Varnas*, except where a man violates the duties peculiar to his class Slavery is considered as analogous to the condition of a wife"

1 : *e* the classes See Yājñavalkya Âthara Chapter IV On the distinction based on *Classes (Varnas)* and *Castes (Jâtis)* see verses 90-96 pages 241-267.

2 Ob V 39

Vāmilrodaya

Now begins the Chapter known as 'Breach of Contract of Service'. Its nature has been described by Nārada¹ "If one after having undertaken to render service, does not render it, it is called a 'Breach of Contract of Service, a title of law. Manu, moreover, has not treated this separately as a title of law, as he has included its treatment in the title called 'Non payment of wages, intending it for some reason to be so stated

An attendant, moreover, is of five kinds. A pupil, an apprentice a hired servant, one appointed to (perform) a task, and a slave. There pure work is for four, and impure work is for the slave, vide the text of Nārada² "Impure work has been stated to be for the slaves, a pure work is for labourers. Sweeping the house and the gateway, the places where impurities are deposited, the street, the dustbins, shampooing the secret parts of the body, gathering and putting away the leavings of food, ordure and urine. And lastly rubbing the master's limbs when desired, this should be regarded as impure work. All other work besides this is pure. There, a pupil is one in need of the study of the Vedas, an apprentice is one desirous of learning some art, a hired servant, is one performing work for wages, one appointed to do a work i.e. one supervising by attendance over the workmen doing work. A slave also, has been stated by Nārada³ (same as above p 1210 ll 13-21)

Among these, the course of conduct for a Pupil has already been stated before⁴ 112 "Being invited (by the preceptor) indeed, he ought to study, and whatever is acquired by him, he should bestow on him. Of the hired servant and of the one appointed, will be stated in the Chapter on Payment of Wages. About the slaves, and the apprentice, however, the Author states here

Vāṇināyaka Verses 182, 183

One forcibly made a slave, one sold by robbers and thus made a slave, and by the use of the words *cha*, 'and', and *api*, 'even', one given by him, as also one kept as a pledge, is released from slavery. He moreover, who saves the life of the master when attacked by robbers, tiger, etc. such a one is manumitted. By the use of the word *api*, 'even', are added other reasons for the manumission of a slave. Nārada⁴ states these

1 Ch V 6-7

2 Ch V 26-28

3 See Ācharadhyaya 27 p 107 above

4 Ch V 31-36

" One maintained during famine time, is released from bondage if he
 " gives a pair of oxen. What has been consumed during famine, cannot
 " be repaid (in value) by labour (31). A slave of maintenance is released
 " immediately on his giving up the subsistence (30). Even a pledged
 5 " slave (is released) if his master redeems him by discharging the debt (32).
 " It is, however, by paying the debt with interest that a debtor is
 " released (33). One who has come forward and offered himself declar-
 " ing 'I am thine', one made a prisoner in war, and one won through a
 " wager, these are released on giving each a substitute whose capacity
 10 " for work is equal to theirs (34). Also one enslaved for a stipulated
 " period becomes emancipated on the expiration of the period (35). One
 " enslaved on account of his being connected with a female slave is
 " released upon the female slave being kept in check (36)". "By work
 " equal to theirs" *i.e.* by performing work which is proper for him. 'Upon
 15 the female slave being kept in check' *i.e.* by giving up intercourse.
Kātyāyana says : " When one has intercourse with his own slave, and
 " she gives birth (to a child); then at the sight of the issue she should be
 " made a non-slave; as she is with a progeny." This, however, is only
 when the master is without a son etc. according to *Prakāśa*, *Pārtijāta*.
 20 *Ratnākara* and others.

By favour also one may be released from bondage. *Nārada*¹ states
 the procedure on such an occasion :—"He who, being pleased in mind,
 " wishes to emancipate his own slave, shall take from his shoulders a jar
 " filled with water and smash it (42). He shall sprinkle his head with water
 25 " containing uncrushed grain and flowers and having declared him a free
 " man three times, he shall dismiss him with his face turned towards the
 " East. From that time onwards he should be called 'one protected
 " 'by the master's favour,' food may be eaten with him, and a gift may
 " be conferred on him ; thus he becomes approved of the good."

30 *Kātyāyana* : "The master is declared to be the owner of the
 " property which was of the slave. But to what was obtained by favour
 " or by sale of that property the master is not entitled. One not a slave,
 " if she be married by a slave, she also gets into the status of a slave ;
 " because her husband is her lord; and her lord is under the bondage
 35 " of the master." 'By favour &c.'—the meaning is that by one's own
 favour, or by the sale of oneself whatever money may have been
 obtained, that the master cannot claim.

'By a slave etc.—Here if the word non slave is used in antithesis to the word slave referred to in regard to the marriage, any other not owned by any one, or not having a master at all, when she has been married, she becomes of the ownership of the master of the husband. Necessarily, therefore, it follows that marriage with a slave has the result of release from the bondage of the former owner. And it is for this that this text occurs in a chapter on it. The cause of ownership, moreover, is the marriage by a slave with the consent of the former master. In the case of an opposition, however, there would be no obliteration of the ownership of the former master, just as in the case of a marriage with a servant girl. According to the moderners, however, if she is married by a slave without the consent of the former master, then a white courtesan alone should be given to the former master by the new master, and not that the status of slavery itself is not induced. They say that there exists the status of slavery in regard to the former master as an inducing cause for the taking of a white courtesan. As for the declaration of Hanschandra in the *Mārkaṇḍeya Purāṇa*: "Even if released by the master a *Sudra* is never manumitted from slavery that is born with him, who will wipe it away from him?", that is intended as deprecatory of a slave, otherwise, it should be remembered, that his own manumission from slavery would not take place (182).

Pravrajya etc. 'asceticism etc. After entering into the ascetic order, one who swerves off from it, *sa rājño dāsa amaraṁāntikah*, 'he is the King's slave till death: i.e. until the time of his death his status of slavery continues. Of him, there would be no release as a slave. This is the meaning.

Varnānām etc., 'Of the *varṇas* etc., slavery can occur in the descending order, and not in the inverse order. As for example a *Kshatriya* can be a slave of a *Brahmana*, and not of a *Vaiśya* etc. This, moreover, has application to others than those who have been apostates from asceticism. Since Narada¹ has stated "In the 'inverse order of the *varṇas* slavery is not ordained, excepting in the 'case of those who violate their own peculiar duties. Slavery has been 'regarded as analogous to the condition of a wife. Both these clauses viz. beginning with *varṇānām* and *pravrajyāvastah* have application to others than a *Brahmana*. For² 'Where (the members of) the three

"*varnas* of the twice-born class become apostates from asceticism, the king "should cause the *Brāhmaṇa* to be banished, and reduce to slavery the "Kṣatriya and the *Vaiśyas*." The expression *Kṣatratvit*, the Kṣatriya "and the *Vaiśya* " is a collective dual compound (182-183).

Śūlapāṇi

Yājñavalkya, Verse 183

Those who become apostates, i. e. have fallen off from the vow of asceticism, &c., and being of the *Kṣatriya*, *Vaiśya* or *Sūdra* *varnas* become the slaves of the Kṣatriya King. This status of slavery is, moreover, in the descending order, and not in the ascending order. A *Brāhmaṇa* can never be the slave of a Kṣatriya. As says Kātyāyana : "Among the three *Varnas*, there can never be a slavery for a *Vīra*; even "though of the same *varna*, a *vīra* should never be made a slave" (183)

The Author mentions the duties of an apprentice

Yājñavalkya, Verse 184

Though he have acquired his art, the apprentice must remain in his master's house during the period stipulated, receiving his subsistence from the teacher, and giving to him the proceeds thereof.

Mitākṣharā:—*Anlevāsi*, an apprentice, *vaset*, must remain, *gurorgrhe*, in the house of the master, *kṛtakālam*, during the stipulated period, i. e. for as long a period as may have been fixed under an agreement, *c. q.* thus, "I shall reside in your house for a period of four years for "learning medicine or any other art &c." and even when he has acquired the desired lore, even before the (expiration of) four years.

How should he remain? *Gururāptabhojanah*, receiving his subsistence from the teacher, he who has obtained his food from his teacher—a person of such a description. *Tatphalapradaḥ*, giving to him the proceeds thereof, he who offers to the teacher the proceeds of it, i. e., of the art—thus he should reside.

Even a special rule has been indicated here by Nārada¹ : "If one "wishes to be initiated into the art of his own "craft, with the sanction of his relations, he may "go and live with a teacher, after having fixed the "duration (of his apprenticeship) (16). The master shall teach

"him, feeding him at his own house. He must not employ him in
 "work of a different description, and must treat him like a son (17). If
 "one forsakes a master, who instructs him and whose character is un-
 "exceptionable, he shall be compelled by force to remain (at his
 "master's house), such a one makes himself liable for a corporal 5
 "punishment and imprisonment (18). Even though his course of in-
 "struction be completed, an apprentice must continue to reside at
 "the house of his master, untill (the expiration of) the fixed period;
 "whatever work he may do, while there, the profits thereof shall belong
 "to the master (19). After he has acquired his art, at (the end² of) 10
 "the stipulated period, the apprentice shall reward³ his master plenti-
 "fully, and return home, after having obtained leave from him (20)".

The word *Vadha*, 'Corporal punishment', here is used in the sense
 of 'beating', having regard to the trifling nature of the fault

Thus ends the Chapter on Breach of Contact of Service. 15

Vīramitrodaya

After having stated the rules relating to the slaves, the Author
 states the rules relating to apprentices

Vājñavalkya, Verse 184

'In your house, I 'all stay for such a period,' thus having made 20
i. e. fixed a period, at the residence of the teacher, *Kṛtasilpī*

1. अशुद्धः—who has not been found fault with, as having been concerned in
 any moral sin or legal crime

2. i. e. when the time fixed for his apprenticeship ends. *Asahya* and
Bālabhāta

3. Dr Jolly translates in this manner. According to the interpretation of
Bālabhāta, वदति would only mean a special part of worship *v.* going round
 the object of worship with folded hands. For he interprets वदति as वदति
 and with that view the literal meaning of वदति may not have any force. The
 reader will note that *Bālabhāta*'s interpretation is the one which will strike
 every one having in mind the sense ordinarily conveyed by a वदति

'though he have acquired his art,' i. e. even when he has secured the art, still, the *antekṣṭ*, 'apprentice', one who has received subsistence i. e. meals from the teacher, such a one should stay at his place paying back the fruit of that art as his fee. Any duty in excess of the
 5 art, however, the apprentice should not be made to perform. So Nārada¹ says: "He must not put him to any other work; and "should treat him as a son" So also². "If one forsakes a master "who instructs and whose character is unexceptionable, he shall be
 "compelled by force to remain (at his master's place), such a one makes
 10 "himself amenable for a corporal punishment and imprisonment" Similarly³: "After he has acquired his art, at (the end of) the "stipulated period, the apprentice shall reward his master plentifully, "and return home, after having obtained leave from him"

Thus ends in the Commentary on Yājñavalkya the chapter called
 15 the Breach of Contract of Service

Sūlapāṇi

Yājñavalkya, Verse 184

Antekṣṭ, "an apprentice", a pupil of a particular kind, *Kṛtākālāḥ*, 'who has acquired his art' i. e. who has mastered the art of gold manufacture &c. such a one *Kṛtākālam*, 'for the stipulated period', having
 20 obtained his meals from the teacher must reside in the house of the teacher alone. The receipts of the art such as the kinds of jewellery &c. he should offer to the preceptor (184)

Here ends the Chapter on Breach of Contract of Service

1 Ch V 17

2 Ch V 18

3 Ch V 20

CHAPTER XV.

Transgression of a Compact.

Now is being described (the law regarding) the 'Transgression of a Compact'. Its characteristics have been indicated by Nārada¹ through (a discussion of) its contrary : "The (general) rules settled among 5
"Pākhadis², Nāgamas³ and like others⁴ is called a Compact (*Samaya*).
"Non-Transgression⁵ of such a compact thus gives rise to a Title of
"Law known as Transgression of a Compact" Settlement of rules in
accordance with the special⁶ provision of law is a compact; the non-
transgression of the same i.e. non-breach i.e. observance When this is 10
being transgressed, it gives rise to a Title of Law. This is the meaning

The Author states a rule by way of an introduction to the same
Yājñavalkya, Verse 185

A king, having erected a building in the town, and having therein
lodged Brāhmanas, versed in the⁷ three Vedas provided⁸ with livelihood, 15
should say to them 'Protect your *Dharma*'.

1 Ch X 1

2 Pākhadis—i.e. Heretics—Kṣhaparakas i.e. the Buddhist or Jain mendicants, and others who do not accept the authority of the Vedas See Mitākṣharā further on Yajñ II 102 p 1228

3 Nāgamas—traders and others Those who regard the Veda as authority but only as the word of an *Āpta* i.e. the Pāsupatas and others See Mitākṣharā on II 102

4 This is why Vijnānesvara characterises this definition of Nārada as one given in a negative manner *Apātarma* is the transgression of a compact (*Samaya*) its 'non-transgression', i.e. performance, is *Anapātarma*, and a chapter of law which deals with the non performance or transgression is a chapter entitled 'Transgression of a Compact' अपातिर्यते when freely translated here, only means 'by its opposite' It is in this way The Chapter is headed 'Transgression of Compact', while the definition gives what is a 'Compact' and how it is maintained Thus the subject of the 'transgression of a compact' is illustrated by a treatment of its opposite

5 अपातिर्यते—i.e. the particular provisions of the Dharma Śāstra The Dharma or rule, as propounded in the Dharma-Śāstra bearing on special contracts or agreements

6 i.e. the *Ri*, *Yajus* and *Sāma* These are the three Vedas indicated by the expression *Trividya*

7 i.e. after having properly endowed the institution with funds for the maintenance of persons acting there as for their payment &c The meaning is that he should assign land, money, or the like for their maintenance, so that they may perform their duties without any interruption

8 *Svadharma*—i.e. the duties binding upon self (*Sva*) The word *eva* (self) applies to all, and indicates the law, in general, holding among the people The author declares here what should be done by the Brāhmanas thus enjoined

Mitākṣharā —The king, in his town : *i. e.* in the fort or other place, having erected *sthānam* a building, *i. e.* a white house, and *tatra brāhmaṇān nyasya*, therein having lodged Brāhmanas, *i. e.* having appointed them there, and having provided that assemblage of Brāhmanas versed in the three Vedas, with livelihood : *e.* having endowed them with land, gold &c should say to these Brāhmanas "May your own "Dharma be observed by you" *i. e.* the rules regarding the Varnas and Āśramas as dictated in the Vedas, and Smṛtis

Vīramitrodaya

10 Now the Author begins the treatment of the Chapter of Law called the "Transgression of a Compact"

Yājñavalkya, Verse 185

15 *Rājā*, 'the king', in his own town, having created *sthānam*, 'a place' such as a white house, *tatra Brāhmaṇān nyasya*, 'and having therein lodged Brāhmanas', *trividyam*, 'those well versed in the three lores', *ṛtumat*, 'provided with livelihood' *i. e.* having made them rich and affluent in gold etc "May the duties of the Varnas and "Āśramas be looked after by you' thus should he say to them, *i. e.* appoint them to the task By the use of the word *tu*, 'however,' is excluded the inauguration without provision for maintenance (185)

Sūlapāni

Yājñavalkya, Verse 195

25 The king having caused a building to be erected in his town, and having therein lodged Brāhmanas renowned for their learning and heredity, should make provision for maintenance proper for a married man, for one who is accomplished in the study of the three lores such as the *Rk* and the rest, should say to them thus: "You should protect your "Dharma" As says Brhaspati "The king should watch *Vīras* who are "Vedic scholars learned divines, and have maintained the sacred fire, and 30 "should provide maintenance for them They should perform for the "citizens their ordinary and special rites, as also performances for a particular objective, so also the expiatory and the auspicious ones, and declare 'a decision in doubtful cases' (185)

1 The four principal Varnas are the Brāhmaṇa, Kṣatriya, Vaiśya and Śūdra (See Yājñavalkya Acharādhyāya Verse 10, also Ch IV) The Āśramas or the paths of life are four *viz.* The *Brahmacharya* or the life of a celibate student, the *Yājñ* Acharya 32-50 *Gṛhasthya* or the life of a householder, after marriage, the *Hanaprasāda* the life of a hermit, and the *Sannyāsa* or the life of an ascetic

The Author mentions the duties to be performed by these when so appointed

Yājñavalkya, Verse 186

Without detriment to one's own *Dharma*, whatever customary law there may be, should also be carefully observed as also the duties imposed by the king. 5

Mitākṣharā:—Duties arising under any *custom*¹ such as the preservation of the pasture for cow, and of water, and the management of temples and the like, should also be carefully observed without (however) infringing the duties prescribed by the *S'ruti* and the *Smṛti*. 10
Similarly, the king, should also enforce, *nijadharmāvirodhabaiva yaḥ sāmāyiko dharmāḥ*, such customary rules only as are not inconsistent with one's own *dharma*, e. g. 'meals should be provided for all travellers,' or the rule that "the horses and the like shall not be carried to the 'dominions of the enemy.'" 15

Vīramitrodaya

Thus having been appointed, what should be their duty? So the Author says

Yājñavalkya, Verse 186

Yaḥ sāmāyiko, 'whatever customary', i. e. in the form of the pasturing of cows, the preservation of temples etc. and by reason of the agreement the duties resulting from the King's ordinances caused by the cowherds etc. such also as, 'the horses and the like should not be taken over into 'the enemy's circle', and such as, 'in my kingdom, it should be so arranged 'that guests should not be without having a meal', and the like com- 25
mandments issued by the king by his own desire, that too should be preserved i. e. looked after, by the *Brāhmanas* who have been appointed with the direction 'may you preserve our own laws'. By the use of the word *tu*, 'however', the Author excludes such customary rule as is opposed to one's laws. 30

By the use of the word *api*, 'also', is included obligatory compacts stated in this text of *Bṛhaspati*²: "A compact formed among villagers, 31

1. *Samaya* may either mean a compact, agreement, or a custom or usage, which is nothing but a course of conduct followed by a tacit agreement.

2. Ch. XVII. 2.

- "companies (of artisans), and associations (which) is (called) an agree-
 "ment—such (an agreement) must be observed both in times of
 "distress and for acts of piety also", and in addition to the one establish-
 ed by the King or his officers. By the use of the word *cha*, 'as also', the
 5 Author includes what is authorised by the King (186)

Sūlapāṇi

Yājñavalkya Verse 186

- The rule which has been fixed by a compact which is not in conflict
 with one's own *Dharma*, as also that made by the king, that also must be
 10 observed. So also Brhaspati "Without detriment to established rules
 'whatever royal command has been issued, that itself must be followed
 "under the king's orders" (186)

Having thus stated that a 'Customary rule,' 'should be observed,
 the Author mentions a penalty for its infringement

Yājñavalkya Verse 187

He who embezzles the property of a *gana*, as also he who violates
 their usage, the king should deprive such a one of all his effects and banish
 him from his realm

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- Mātākṣarā —Yah, he, moreover, who misappropriates the property
 of a *gana* : *e* property pertaining to any guild or
 20 Penalty for violat- association of villagers *samvit*, a *customary rule*, is
 ing a customary Rule a compact, either made by an association or by
 the king. He who *langhayet*, *violates*, *i. e.* transgresses these, of such a
 man, the whole property should be taken away, and the king, *vipravâs-*
 25 *ayet*, *should banish* : *e* expel him, *svarâshtrât*, *from his realm*. This
 penalty, moreover, should be administered in cases of aggravated
 offences or the like

- In the case of petty offences, however, any of the four penalties,
 viz. banishment, or a fine of four *śukas*, six *nishikas*, or a hundred
 30 silver coins, may be fixed by regard to the caste and the capacity (of
 the offender) as propounded by Manu. 'If a man belonging to a cor-
 "poration inhabiting a village or a district, after solemnly swearing

"to a compact, break it through avarice, (the king) shall banish him
"from his realm (219) And having imprisoned such a breaker of a
"compact, he shall compel him to pay, four *swarnas*, six *nishkas*, and
"one hundred silver (coins) (220)'

Vīramitrodaya

5

The Author states the penalty for a transgression of such a compact

Yājñavalkya, Verse 187

The meaning is that in the case of an infraction, the King should
deprive him of the entirety of his property and expel him. Here in the
interest of brevity of the composition should be understood as the
statement of the penalty for one taking away the property of the
gana (association) 10

Thus penalty, moreover, is to be observed in the case of an aggra-
vated form of offence. In the case of a petty offence, however, any
one of the penalties mentioned by *Manu*¹ may be fixed by regard to 15
the caste, capacity and the like viz "If a man belonging to a corpora-
"tion inhabiting a village or a district, after solemnly swearing to a com-
"pact, break it through avarice, the king shall banish him from his realm,
'(219) And having imprisoned such a breaker of a compact, he shall
"compel him to pay, four *swarnas*, six *nishkas*, and one hundred silver 20
"coins (220)" (187)

Sūlapāni

Yājñavalkya Verse 187

He who embezzles the common property of an association as also one
who transgresses the terms of a compact such a one should be deprived of 25
his entire property, and the King should expel him from the kingdom (187)

Thus they should act, the Author says

Yājñavalkya, Verse 188 (1)

The directions given by the advisers of the association should be ob-
served by all 30

Mitākṣharā — Among the members those who are competent to
advise as to the interests of the Associations, the directions given by
these should be followed by others who are incorporated as members

Otherwise there is penalty; so the Author says
Yājñavalkya, Verse 188 (2)

There, he who acts contrary, shall be compelled to pay the first
amercement.

- 5 Mitākṣharâ:—He, however, from among the members, who acts
obstructively to the directions of one who advises as to the interests
of the Association—such a man—must indeed be punished by the
king with the first amerement.

Vīramitrodaya

- 10 A rule established by a village association or the like must not be
transgressed, as is the case with a rule fixed by the king; so the Author
says

Yājñavalkya, Verse 188

- 15 Those who declare something for the benefit of the public such as
e.g. the construction of a bridge etc. must be obeyed by all in regard to
the advise of these declared in this manner. He, moreover, who
in such a case acts contrary i. e. is opposed, shall be compelled to pay
the penalty for the first amerement (188).

Śûlapāni

- 20 Yājñavalkya, Verse 188

The members of an association, such as the village guilds, &c. should
follow the directions of the advisers of the association, be they two or three.
He, moreover, who acts contrary to it should be compelled to pay the first
amerement (188)

- 25 How should the king in this manner behave towards the members
of an Association? So the Author says

Yājñavalkya, Verse 189

- Those assembled for the affairs of the Association, let the king dismiss,
when their business is finished, after honouring them with gifts, honour,
30 and expressions of civility.

Mitākṣharâ:—Such members of the Association as may have
approached the king for a purpose of the association, the king should
dismiss after pleasing them by means of gifts, honour, and expres-
sions of civilities, after they have finished their business.

Vīramitrodaya

In regard to those who execute the behests of these, the Author states the duty of the king

Yājñavalkya, Verse 189

Those who have come to him in connection with a business in the interest of an association, after the completion of their business, the king should favour all of them with gifts, cordial reception and honours, and then dismiss (189) 5

Sūlapāni

Yājñavalkya Verse 189

Those who have arrived in connection with the business of an Association the king should honour with presents, honours and cordial reception (189) 10

The Author mentions a rule for one who appropriates what is given to the Association

Yājñavalkya, Verse 190

Whatever a man who is sent for the business of an Association receives, let him deliver it. He should be compelled to pay eleven fold if he does not himself deliver. 15

Mitākshara —He who, when deputed to wait upon the king on a business of the Association whatever he receives, such as gold, dress &c., all that he must offer unsaved to the Committee of the Association. Otherwise, he shall be made to pay a fine equal to eleven times the property obtained (by him). 20

Vīramitrodaya

When all do not go near the King for the business of the association, but only one deputed by those all, then how can there be the honouring of all? So the Author says 25

Yājñavalkya, Verse 190

When any one is deputed for a business in the interests of the association, whatever he obtains from the king, that he should distribute among all. When he does not so make over, then he should be compelled by the king to pay elevenfold of what was given. For the idea is that the honour done to the one was itself the honour for all (190) 30

Sūlapāni

Yājñavalkya Verse 190

One who has been deputed for the business of the association should bring and tender whatever money he receives. If he does not give, he should be compelled to pay the same eleven times (190) 30

The members of the advising body should be of a particular description. So the Author says

Yājñavalkya, Verse 191

‘Men knowing Dharma, pure, unavaricious, should be commissioned to consider the business. The directions of these,—the advisers of the general body,—must be executed.

Mitākṣharā:—Dharmajñā, men knowing the Dharma, as laid down in the *Śruti* and the *Smṛtis*, pure internally and externally, unavaricious for any pecuniary gain, should be commissioned as members of the deliberative assembly. Their directions must be executed by others. This rule is again repeated as an indication of (special) regard (therefor.).

Vīramitrodaya

Yājñavalkya, Verse 191

Those well-versed in the rules of the *Śrauta* and *Smṛita* performances, possessing internal and external purity, devoid of avariciousness, thoughtful of the interests of the association in their transactions, such should be invested by the king. The meaning is that the non-observance of the advice of these benefactors of the association necessarily leading to punishment, their words should be followed by all (191).

Śūlpāṇi

Yājñavalkya, Verse 191

Versed in the import of the Vedas, pure in monetary affairs, not avaricious, should be the advisers of the association in regard to their transactions. The opinion of these who give sound advice should be followed. The repetition again of this text is with the object of mentioning special acquisitions such as the knowledge of the Vedas, etc (191)

Now, with a view to extend the rules laid down for the Scholars in three Vedas, to *Śrenis* etc, the Author says

Yājñavalkya, Verse 192

This is the rule for the associations of *Śrenis*, *Naigamas*, *Pākhandīs*, and *Ganas*. The king should preserve their peculiarities, and conserve their rules of old.

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Mitākṣharā:—*Śrenis* or bodies of artisans are those who subsist by the manufacture of the same commodity. *Naigamas*, such as the

1 These are the same as referred to in Verse 188 above

Pāsupatas and others, are those who accept¹ the authority of the *Vedas* (simply) as composed by an Aṭi. The *Pakhandins*, such as *Najnas*², *Sangatas*, etc. are those who do not even admit the authority of the *Vedas*. A *Gana* is a body of men living by the same profession such as the soldiers, and the like. *Eshām* for these four varieties of men this is the rule: as laid down in, "Without³ detriment to one's own "*Dharma* etc." Moreover, let the king preserve their peculiar rules of conduct, and also conserve their hereditary craft.

Here ends the Chapter on the Transgression of a Compact.

Vīramitrodaya

The Author extends the law laid down for the *Tranidya*s, to guilds etc.

Yājñavalkya Verse 192

The combination of people maintaining themselves by (the sale of) one kind of merchandise is called the *Sreni*⁴, *Nargamah*, the citizens, *Pakhandimah* not accepting the *Vedas* as authoritative, *Ganah* the guild of persons pursuing one profession such as the manufacturer of arms etc. i. e. the rule stated (in verse 186) above in "without detriment to "one's own *dharma* &c. By the use of the word *aṭi*, 'also', we included the king's officers.

In connection with the subject, the Author states the duty of the king in regard to these. He should preserve their rules as established of old. By the first *cha*, 'and', are included the *Brahmanas* spoken of before. By the second *cha* is added that he should fix rules for those for whom no rules exist (192).

Thus in the commentary of Yājñavalkya ends the Chapter on the Transgression of a Compact.

Sūalpāni

Yājñavalkya, Verse 192

Śrenayah, such as the picture makers, *nargama* the tradesmen and various other citizens. *Pakhandah* i.e. apostate from asceticism. *Gayah* such as an association of *Brahmanas*. Of these also this very same rule as stated above is the rule. The king should preserve their peculiarities and conserve the rules as established as of old (192).

Thus ends the Chapter on the Transgression of a Compact.

1 According to the tradition the *Vedas* are the direct revelations of the Divine Word made to the seers who simply transmitted what they saw. There are some schools of thinkers, who do not accept this origin of the *Vedas* but maintain that they are the compositions of revered sages. They accept the authority of the *Vedas*, not as a Divine Word revealed and transmitted through the seers, but simply as a work of high authority entitled to respect and weight, as having been composed by men of vast learning and accomplishment.

2 Varieties of *Enlila* who. These do not accept the authority of the *Vedas* at all. 3 i.e. Yajñ. II 186. 4 See Verse 20 above pp. 746-747.

CHAPTER XVI

On the Non-payment of Wages

Now begins the chapter called the non-payment of Wages, a title of law. Its characteristics have been stated by Nârada¹: "A series of
 5 "rules (will be) stated (next) for the payment and non payment of
 "wages of labourers. It is termed 'Non payment of Wages' a title
 "of law." The meaning of this (is this): The chapter of law wherein
 the rules of payment and non payment of wages of the labourers have
 been stated (*etc*) in the stanzas following, is known as the chapter on
 10 the 'Non payment of Wages.'

There the Author mentions (a rule as to) a decision

Yājñavalkya, Verse 193

One who having received his wages, abandons the work, must pay
 twice. If none is received, he shall be made to pay an equal amount. The
 15 implements shall be preserved by the servants

Mîtākṣharâ—One, by whom the wages had been received, if he aban-
 dons & do not perform the work which he had undertaken, should pay
 twice the amount of wages to the owner. When, however, he abandons
 a task which he had agreed to do, when he had not received any
 20 wages, then he should be made to pay an equal amount of as much as
 was fixed as wages, and not a double.

Or, (the passage may be interpreted² thus) : he shall be forcibly
 compelled to perform his work, after payment to him of the wages
 promised; as directed by the following text of Nârada³ "One, who
 25 "does not perform a work after having agreed to do it, should be
 "forcibly compelled to do it, after paying him his wages."

The rule as to wages also, has been stated by the same Sage⁴ "Let
 "the master, for whom work is performed, pay wages to the servants
 "hired (by him) according to their agreement, at the beginning, at the
 30 "middle, or at the end, as may have been settled between them"

1 Ch VI 1

2 Vijñānesvara proposes this interpretation of the text, as an alternative
 course suggested by the text of Nârada

3 Ch VI 5

4 Ch VI 2

The servants also must preserve to the best of their ability implements of husbandry, such as the lida, and the rope of the plough, and like others otherwise there would not be any ploughing etc

Viramitrodaya

"A series of rules are stated in connection with the payment and non payment of wages of labourers That is termed "Non payment of wages — a title of law, thus stated in this text of Nārada the Author treats of the title of law known as 'the Non payment of wages

Yājñavalkya Verse 193

Grhutavelanah, "One by whom wages had been received, such a labourer having undertaken, *karma tyajan*, as also a contractor, if he abandon the work, *samam*, 'an equal amount, i.e. equal to the amount of wages settled, such amount he 'should be compelled to pay *dāpyah*, by the King And under compulsion he should be made to perform the work after paying him the wages, as stated by Nārada¹ "One who does not perform the work after having agreed to do it, 'should be forcibly compelled to perform after paying him his wages This for him who after having commenced, does not (continue to) perform

Where there is no commencement, however, the rule is stated by Manu² "A labourer, who without being ill, out of arrogance does "not perform the work as agreed to, shall be fined eight *Kṛshnālas*, and "no wages shall be paid to him

By the word 'abandons, the penalty has been stated, where the abandonment of the work is of his own making otherwise, however, "if he abandons on account of a fault of the owner, he should get for as "much as he has performed, the rule thus stated by Nārada should be observed.

The labourer also should preserve the implements of the owner such as, the whip, the plough etc The meaning is that if it is not properly looked after and preserved the lost article should be restored to the owner On whatever occasion any particular wage has been agreed upon between the owner and the labourer that kind of wages on that occasion should be paid This is clear and therefore, may be overlooked (193)

Sūlapāni

Yājñavalkya, Verse 193

- One who has accepted wages for the performance of a work, if he
abandons that work shall pay double the wages. If the wages have not
been received he may be made to pay equal *Bhrīyah*, 'by the servants
5 *ie Bhriakmih* i.e. 'servants on wages' The implements such as the plough,
bridle etc should be preserved (193)

The Author mentions a rule as to one who causes a work to be
performed without determining the wages

10 Yājñavalkya, Verse 194

He, however, should be made to pay by the rule of the land a tenth
part of the (proceeds of) trade, cattle, or crop, who without settling the wages
causes work to be done.

- Mitaksbarâ* — That master, however, *ie*, a grocer, an owner of
15 cows, or an agriculturist, who even without clearly settling the wages
causes work to be done by a hired servant, whatever (profits) may be
obtained from that work, *ie* from the trade, cattle, or agriculture
the tenth portion of that should be caused to be paid to the hired
servant, *Mahakshutâ*, by the ruler of the the land, *ie* by the king.

20 Vîramitrodaya

When the labourer is working without any wages being determined
what should be paid to the labourer? So the Author says

Yājñavalkya, Verse 194

- That master, however, who causes work to be performed such as
25 trade and the like without the wages being determined, such a one
should be made by the king to pay to the labourer a tenth part of the
profit of trade, cattle, or agriculture. This, moreover, is with reference
to a cultivator of the soil, vide the text of *Brhaspati* viz. "A third or
"fifth shall a cultivator of the soil take as his share. One who is giving
30 "food and clothing shall take a fifth of the plough. A third share
the absence of food or clothing. (194)

Sūlapāni

Yājñavalkya, Verse 194

- He moreover, who causes work to be done even without determining
the wages such a one should be made to pay by the king a tenth part
35 the income from trade, cattle, and harvest (194)

The Author mentions a rule for one who does something with out an order

Yājñavalkya Verse 195

When one disregards the place and the time as also where one other wise causes a reduction in profits in such a case the will of the master (shall prevail), but more shall be paid if more be made 5

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Mitakshara — A hired servant, however who does not sell a com modity at the proper time¹ or in a proper place and thus disregards these through insolence or the like or one who at the same time or place brings in less profit than what would have been reaped by an extens ive sale (of the merchandise) in the case of such a servant, the wil 10 of the master shall prevail in the matter of payment of wages &c as much may he wish so much should he pay and not the entire wages

When, however more profits are made by reason of a special knowledge as to time and place then an amount exceeding that fixed before, should be paid by the master to the labourer 15

Viramitrodaya

When the owner suffers a loss in the profit on account of the fault of the labourer the Author mentions the diminution in the wages

Yājñavalkya Verse 195

That labourer, however who transgresses the time and the place appropriate for trade or cultivation and does not make the sale culti vation &c is guilty of transgression as also he who otherwise makes a profit by spending too much of the master's property *tailra* for such 20 &c in regard to such a labourer *sudṛuṇaś*, of the master in regard to the payment of wages *chhandaś* will &c option The meaning is as much as the master wishes, so much should he pay, and not the entirety of the wages 25

1 The meaning is this though he sees a proper time and place for the sale of the commodity if the factor through insolence or the like can not sell it or if he accept less profit thinking that the time and place would cause him much trouble let the master pay him what wages he pleases not the full rate Cole brooke Digest

When, moreover, by reason of his special knowledge of the place and the season the labourer makes a greater profit, then more wages should be paid in addition to the tenth mentioned in the rule. By the first use of the word *cha* is included the special, particular etc. about the purchaser, and by the second use of the word *cha* the loss in the original capital (195).

Śūlapāṇi

Yājñavalkya, Verse 195

He, however, who carries the load, etc., beyond the limit of the region other than the one which has been fixed, or does extra work beyond the fixed time, or performs more work than the nature of that fixed, in such cases it is at the option of the owner. In the case of more, however, more must necessarily be paid. For less, less; and hence also the option (195)

The Author mentions a rule as to the payment of wages for task accomplished by several workmen

Yājñavalkya, Verse 196

As much work a man does, so much will be his wages; if it cannot be accomplished by both, the wages should be paid for the work done according to the agreement.

Mitākṣharā:—When, moreover, even a single task for which the wages have been fixed, (and the performance of) which was (undertaken and) commenced, but which, on account of illness or any other impediment was found to be impossible to be accomplished even by both—by the use of the word 'even' (is implied) "even by many" i. e. if it could be finished, then *yo yāvat karma karoti, as much work labourer does, tāvat, so much, i. e. proportionately to the work done by him, as determined upon by an arbitrator, should be paid to him as his *velanam*, wages, and not an equal amount. It should not be supposed that no payment may be made, on the ground that there was no agreement for payment of wages for the several parts of the work.*

If, however, the work be accomplished by both; i. e. be finished then as much as was agreed upon i. e. stipulated for, so much should be paid to both; and not the entire amount of wages to each, nor should the payment be according to the work after determining it.

Vīramitrodaya

The Author states a rule in regard to work to be performed by several labourers

Yājñavalkya, Verse 196

When one (piece of) work is completed by being performed by 5
two or more contributing more or less labour, then by regard to the
less or more labour of each the wages should be distributed among
them, when it cannot be accomplished by two or more The
meaning of the word *api* is that when it is not accomplished on account
of the fault of the second labourer If the work is accomplished the 10
contract should be completed as agreed upon

The wages agreed upon to be paid for a particular performance are
to be paid only on the completion of the work and the wages are not
to be paid for only a part performed The meaning of the substance 15
is that the wages are not to be paid distributively to each individual
labourer, but are to be paid collectively in a single lot to all together or
by dividing it among them (196)

Sūlapāni

Yājñavalkya, Verse 196

He, who performs as much work his wages should be paid by regard 20
to that work, if that work cannot be accomplished by both If, however,
it can be accomplished and has been finished wages should be paid as
agreed upon (196)

The Author mentions a rule regarding a Soldier and a Carrier

Yājñavalkya, Verse 197

A Carrier shall be compelled to make good a vessel which has perished 25
except it be by (the act of) God or the king One who creates an obstruction
at the time of starting shall be made to pay twice the (amount of) wages.

Mitāksharā—A vessel regarding which no calamity has arisen
owing to (the act of) God or the king, if such a vessel be destroyed 30
by a carrier through his folly then he should be made to pay for
such a vessel according to the loss (caused) Nārada says' the same
"If a vessel be damaged on account of the fault of the Carrier, he
' shall be compelled to make good whatever loss may have been caus
"ed, excepting such as may be due to an Act of God or the king" 35

- He, moreover, who having before undertaken the service of carrying one who intended to start on an auspicious day for a marriage or other similar purpose, creates an impediment at the time of starting by saying at that time that he would not do the work then he shall be fined double the amount of the wages fixed since an obstruction was raised to a highly auspicious undertaking

Śūlapāni

Yājñavalkya Verse 197

- With the exception of anything due to the (act of) king or God, if through the fault of the carrier any goods or property of the trader such as saffron etc perish then the carrier entrusted with its transport should be made to pay One moreover, who creates an impediment at the time of starting out (on a journey) shall be made to pay twice the amount of the wages (197)

Yājñavalkya, Verse 198

- (If he declines) after setting out, he shall be fined a seventh part, a fourth if (he desert) on the way, he shall forfeit the entire amount of wages if (he declines) in the midway so also one who causes a work to be abandoned

- Mitākṣharā—Moreover, *prakrānte*, after setting out, & after a start had (once) been made, he who gives up a task undertaken by himself,—such a one—should be compelled to pay a seventh part of the wages agreed upon

- It may be said indeed in this very connection by the text¹ “one who creates an obstruction at the time of starting &c” the payment of double the amount of wages has just before been stated, and now, a seventh part, thus there is a contradiction

- The answer The answer to this is that for a man who abandons a work at a time when another servant may be procured, the seventh part (is the fine), while for one who gives up at the auspicious moment of starting itself, a fine of double the amount of wages (is prescribed), thus there is no contradiction He, moreover, who abandons *pathi on the way*, & after a start was made and the journey had once been commenced,—such a one should be fined a fourth part of the wages He moreover, who deserts in the midway shall be fined the entire amount of wages

He however, tyajakah, who causes the work to be abandoned, i.e. when the master compels a servant to stop work, when the latter was not giving it up such a one also (i.e. the master) shall be compelled to pay to the servant the seventh and other portions respectively regard being had to the place (where compulsion was caused) as stated before 5
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This, rule moreover, regards one who has not had any disease or a like calamity, i.e. the text of Manu¹ "A hired servant who not being ill, does not perform through insolence the work as agreed upon, shall be fined eight *Arśanās*² and no wages shall be paid to him

When moreover after the disappearance of the disease or the like cause he makes good his undertaking taking into calculation the lapsed days then indeed he gets his wages i.e. the text of Manu³ If however one who was ill after recovery performs his work according to the original agreement he shall indeed receive his wages even after (the lapse of) a very long time. 10 15

When however one after he is cured of the disease being perfectly at ease through idleness or like other cause does not do the work commenced even to a small extent nor gets it finished by another to such a one no wages shall be paid As says Manu⁴ But if he whether sick or well does not (perform or) cause to be performed (by others) his work according to his agreement, the wages for that work shall not be given to him even if (it be only) slightly "incomplete 20 30

Here ends the Chapter on the Non payment of Wages.

Vīramitrodaya

It has been stated above that 'the implements shall be preserved by the servants There for not preserving or for a prejudicial performance the Author mentions the penalty 25

Yājñavalkya Verses 197-198

Without the act of king or God where a vessel has perished owing to the ignorance of the carrier then the carrier must be compelled to pay 30

1 Ch VIII 215

2 The Guṇja berry i.e. of gold silver or copper according as the case may be (Medhatithi) of gold (Kulluka)

3 Ch VIII 216

4 Ch VIII 217

By the use of the word, "*tu*", the Author excludes what has perished by the act of king or God.

On a day fixed for starting for a marriage or a like purpose the labourer who raises obstructions and when another labourer is not available, shall be made to pay double the amount of wages by compulsion i.e. by beating and any other mode causing extreme pain. By the use of the word "*eva*" are excluded the performance of work at any other time. Then by the use of the word "*cha*" are included those who cause considerable delay in half the way (197)

When a work has been commenced and another labourer is available one leaving the work should be made to pay a seventh part, on the way i.e. in midway in one's own country, one abandoning (shall pay) a fourth part, and one abandoning at half the journey, the whole of the wages should be made to pay. He also who by mischievous counsel causes a workman to give up work such a one also should be compelled to pay double the amount of wages.

The words '*api*' and '*cha*' are for excluding any option. In the matter of a cumulative punishment Manu¹ thus "If ill, when he recovers, he should perform as originally agreed upon such a one will certainly receive his wages even after a very long time. The meaning is that the days of interruption should be counted and the work should be completed within these days. If, however, when he is in perfect health, but does not perform work through idleness or the like, then he does not get the wages, *vide* the text of Manu² "But when whether sick or well he does not cause to be performed the work, the wages for that work shall not be given to him although it is short by a small portion. This is the substance.

Here ends the Chapter on Non payment of Wages

—
Sulapāṇi

Yājñavalkya Verse 198

At the time of commencing a journey he who even at the (starting) place gives up work the person abandoning shall be compelled to pay a seventh part of the wages. The rest is clear (198)

CHAPTER XVII

On Gambling and Betting on Animals

Now commences the Chapter of law called "Gambling and Betting on Animals" Its characteristics have been mentioned by Nārada¹
 "Dishonest gambling with dice, small slices of leather, little staves
 "of ivory, or like others and also betting on birds form a title of 5
 'law called Gambling and Betting on Animals' *dhāṣaḥ* means dice
Bradhma is a small piece of leather, *Saḍaka*-small staves of ivory
 &c made long and squared By the use of the term *Ādyi*, 'Or like
 other,' are included other instruments of enjoyment such as the 10
 play having the four components² of an army division, including the
 elephant, the horse, the chariot and the like Gambling : i.e. play
 ing by means of these inanimate things is preceded by a bet Simi-
 larly that play by means of birds such as a cock a pigeon and the
 like--and by the use of the word 'and', *cha*, wrestlers, rams, buffalos 15
 etc--which is initiated by a bet, both of these give rise to a title of
 law called 'Gambling and Betting on Animals' That has been
 stated by Manu³ 'That which is arranged by (the use of) inanimate
 "things is called among men Gambling (*Dyūta*), when however
 "the play is enjoyed by means of animate beings it should be known 20
 'as Betting (*Samādayaḥ*)

The Author mentions the (scale of) remuneration of a keeper of the Gambling Hall

Yājñavalkya, Verse 199

In a bet, when the wager is a hundred (fold) the keeper of a gambli 25
 ing house shall take five per cent from a gamester⁴, and ten per cent from
 the others

Mitāksharā --The stake determined by mutual agreement of the
 gamblers is called a 'bet', *glabhaḥ* In such a bet one who has (stipulat
 ed to have) a hundred in reference to it : i.e. an increase which is 30

1 Ch XVI 1

2 An army is generally described as having four parts viz the elephant, the horse the chariot and the foot *Chaturanga* is a kind of chess in which these four parts are represented

3 Ch VIII 223

4 i.e. the Keeper of a gambling house

of a higher proportion than a hundred fold is an increase by hundred fold. From such a gamester, *Sabbikah*, the keeper of the hall, may take five per cent for his own maintenance. A hundred in which five *panas* is the increase is a 'five per cent', *pañchakam satam*. The *śākhā* *Kan* (in *Satakam*) is used under the rule. 'These affairs (mentioned in Pāṇini V I upto rule 17) have also the sense of 'an interest, or rent, or a profit, or a tax, or a bribe given thereby' or in "that". The meaning is that he should take a twentieth part (of the gains) of the winner of the bet.

- 10 He to whom belongs the house for the residence of gamesters, is a *Sabbikah* keeper of the gambling house. One who makes provision for all the instruments of gambling such as dice etc., and maintains himself with the amount received therefrom is called a *Sakhāpati*. From any other, moreover, & *śākhā* from a gamester who has not had a
15 wager upto a hundred (fold), *dasakam satam*, ten per cent, he should take a tenth part of the amount won. This is the import.

Sūlapānt

Yājñavalkya Verse 199

- 20 At the time of the gambling etc. where a small increment is recovered from the gambler from that per hundred from the clever gambler the officer of the gambling house should take five per cent. Where it has not been taken then ten per cent from the profit. (199)

What should be done by a keeper who has thus been provided for? So the Author says

- 25 Yājñavalkya Verse 200

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He being well protected, shall pay a portion to the king as fixed. He shall recover the amount of the wager, and pay the winner, and being ever patient shall give a true decision,

- 30 Mitāksharā —The Officer of the gambling house, for whom provision has thus been made *sab*, *he*, being protected from rogues and gamesters by the king—shall pay to the king a portion as agreed upon. Similarly he should recover the amount of the wages, & *śākhā* should recover it from the losing party, by accepting a pledge or by

arrest etc And having recovered that amount, he the keeper should pay it to the winner : & the successful party Also, being (ever) patient, he should always declare a true decision to the gamblers that has been stated by Narada¹ "The master of the gaming house shall arrange the game, and pay the stakes won therein" 5

Sulapāni

Yājñavalkya, Verse 200

The keeper of the house when properly protected by the king shall pay to the king a portion as arranged being always patient he shall take from the gambler the amount won And to the winner also he should pay the amount sticking to the truth Brhaspati² states a special rule 'One defeated in a secret game, or ignorant (of the rules) or (defeated) by (the use of) false dice or deceit though acquainted with the game shall be released, and one who has lost his entire wealth in a game shall not be compelled to give the whole of it (200) 15

When, however, the keeper is not able to make (the party) pay, the king should cause it to be paid So the Author says

Yājñavalkya, Verse 201

That which has been won publicly in an assembly of gamblers in a gaming house having a keeper where the (fixed) portion has been received by the king he shall compel the amount to be paid, but not otherwise 20

Mitāksharā --Prasiddhe, *publicly*, and not in secret, in an assembly of gamblers having a keeper of a gaming house, and in the presence of the officer of gaming appointed by the king, and when the king's portion had been paid by the keeper, the king shall compel a dishonest gamester to pay the amount of the bet won regarding which there is no difference of opinion Anyathā *otherwise*, a bet won in secret, without a keeper and where the king's portion has not been paid, he shall not cause to be paid to winners 25

Sulapāni

Yājñavalkya Verse 201

Where the king has received his own portion he shall compel the amount to be paid which has been won publicly in the house of gamblers in the presence of the game keeper and not otherwise (201) 30

The Author mentions the means for a decision when there is a dispute as to success or defeat

Yājñavalkya, Verse 202 (1)

The Judges of the disputes (about gambling) as also the witnesses
5 shall be (the gamblers) themselves

Mitāksharâ —*Dra-hitârah*, the judges, of gambling should be *ta eva* themselves, i.e. the gamblers, i.e. should be appointed by the king. There the rule¹ that 'they should be accomplished by learning and study' &c does not hold. *Sakshinascha*, the witnesses also, in a bet
10 should be selected from the gamblers themselves. The prohibitive rule² given in "A woman, a minor, an old man, a rogue &c" does not apply here

The Author mentions a penalty by way of prohibiting gambling in certain cases

Yājñavalkya, Verses 202 (2)

Persons gambling with false dice or other instruments shall be branded and banished by the king.

Mitāksharâ —Those who play with false dice or other instruments similarly prepared, for causing a deception *e.g.* by charmed jewels, charms or medicinal preparations and the like, these the king shall brand
20 with a dog's or other mark and banish from the kingdom. A special rule has been mentioned by Nârada³ as to banishment. 'The king shall "banish from the kingdom wicked men who play with false dice, "after a wreath of dice has been hung round their necks, for, that is
25 'the punishment ordained for them.' Moreover, those texts of *Manu*⁴ which prohibit gambling, *e.g.* "Whoever either gambles him-
"self or bets or causes it (by others) all those the king shall punish
"corporally, as also those *S'idras* who assume the distinctive marks
"of the twice-born' and others even these should be understood to
30 apply to gambling with false dice, as also to gambling where there is no keeper nor the gambling officer of the State

1 See Yajñ II 2 p 3 above

2 i.e. in Yajñ II 70 p 851 above

3 Ch XVI 6

4 Dr Jolly's Edition gives a different reading as निहोद्गमनवात् 'shall drive out of the gaming house'

5 Ch IX 224

Sūlapāni

Yājñavalkya Verse 202

The judges of disputes regarding gambling as also the witnesses shall be (the gamblers) themselves. Persons gambling with false dice or fraudulent gamblers should be branded by the king and banished. As says Nārada: 'The king shall banish from the kingdom wicked men who play with false dice, after a wreath of dice hung round their necks. For that is the punishment ordained for them' (202) 5

Yājñavalkya, Verse 203 (1)

Gambling should be ordained under the supervision of a single officer, with a view to (use it as a means of) the detection of thieves 10

Mitāksharā — Moreover, the gambling as discussed above should be ordained under a single supervision: i.e. one where the mouthpiece or the chief is one. The meaning is that it should be organised by the king under the supervision of an officer of the State. Taskarajñāna kārānāt with a view to the detection of thieves. Having kept in view the object of detecting thieves, as gamblers generally hail from those who amass wealth by theft, and so it should be placed under the supervision of one (officer) with a view to the detection of thieves 15

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The Author mentions a rule with a view to extend the laws of gambling to betting on animals 20

Yājñavalkya, Verse 203 (2)

This very law should be understood to apply in the case of betting by means of animate beings

Mitāksharā — The law as to gambling as has been laid down above: In a bet when the wager is a hundred (fold) &c. that very law should be understood *pramādyāte* in the case of betting with animate beings, i.e. that which is made by means of wrestlers, rams, buffaloes and the like and which is called a *Samahvayah* 25

Here ends the Chapter called Gambling and Betting on Animals 30

Varamitrodaya

'Now the Chapter of the law called 'Gambling and Betting on Animals,' and as stated in the text of Manu: viz. "That which is arranged by (the use of) inanimate things is called in this world 'gambling, *dyuta*, that, however, which is arranged by means of animate beings should be known as betting on animals, *samāhvayah*, and divided into two parts, the author begins 35

Yājñavalkya, Verses 199-203

The stake determined by the mutual agreement of the gamblers is called a "bet", *glāhok*, in such a bet, in a hundred *1 c* by the measure of a hundred and increased, the keeper of the hall, *Sābhikah*,
 5 *1 c* the officer presiding the gambling may take five per hundred *1 c* for a hundred of gold etc five of gold etc, from the clever and successful gambler who makes the bet. From any other, when the profit is less than a hundred, he should take ten per cent, that is the meaning. By the use of the word *tu* is excluded the recovery of five
 10 per cent from one who is defeated.

The keeper of the gambling house who has been protected by the king by the arrangement for his subsistence and by the warding off of attacks from others should pay to the king as fixed *1 c* in the order as fixed, a portion from the amount of his acquisitions (199)

15 He should give the won bets to the winner. Afterwards at the place of the defeat he should himself recover *1 c* take, after recovering it. Frithtelling and patience, one who has these two. The meaning is (that) he should give a correct decision (200)

If, however, the keeper of the house is not able to recover, then it
 20 should be compelled by the king to be paid so the Author says '*prāptā* etc, 'recovered etc' where it has been obtained by the king publicly *1 c* not covertly in an assembly of the gamblers *1 c* in the company of the betters. In a place with a keeper attached to the house the king should compel it to be paid to the keeper. Or it should be construed
 25 thus *sthāne* "at the place *1 c* at the gambling place, the king should compel the keeper of the house to be paid. Otherwise, *1 c* where the king has not received a share, or in a secret assembly of the gamblers, or at a place not presided over by a keeper of the house, what has been won, the king need not compel to be paid (201)

30 In transactions relating to gambling, the judges *1 c* the persons entitled to give decisions, as well as the witnesses shall be (the gamblers). By the use of the word *eva* are excluded the absence of a fault indicated in the text¹ "women, minors, aged persons, gamblers" etc. Those who gamble with false dice etc *1 c* involving deceit or
 35 with fraudulent motives *1 c* with an intention to deceive, as also by means of gems, charms, or medicaments, such persons should be branded by the king and exiled. So says Nārada² "The king shall banish from the kingdom wicked men who play with false dice, after a wreath of dice has been hung around their necks, for, that is the punishment
 40 "ordained for them. Thus in the text of Manu³ "Whoever himself engages or causes others to engage, in gambling or betting on animals, "all these, the king shall punish corporally, and also those Sudras who

"assume the distinctive marks of the twice-born, and of others are to be regarded as having a reference to those gamblers only who use false dice (202).

Where there is only one officer of the king viz the keeper of the (gambling) house as the mouth piece i. e. the principal officer, such gambling should be arranged with the object of finding out the thieves

The law as to gambling stated in the text¹ "in a bet when the "wager is of hundred etc., the Author extends to betting on animals—*Esha e etc*, 'this same etc' (By means of) living beings such as wrestlers, rams etc., in a gambling which is to be carried on, known as the *samānyah* i. e. betting on animals, the very law as has been stated above, is to be understood. This is the meaning

Says Brhaspati² "When birds, rams, deer or other (animals) "are employed to fight against one another, after a wager has been "laid, it is called betting on animals.

"When any one is defeated in a prize fight between two animals, "the wager which has been laid there, shall be paid by the owner (of "the defeated animal) A wager shall be made in public, false gamblers "shall be punished Nārada³ "If a man arranges a gambling which "has not been authorized by the king such a one shall not get the stake, "and moreover shall incur a penalty That which has been jokingly "made or which has not been reported to the king there also he shall "not get his stake, and he will also incur a penalty

Vishnu⁴ "Those who use false dice in gaming shall have their "hands lopped off Those who resort to fraudulent practices in gaming "(shall lose) the fore finger and the thumb (199-203)

Thus in the commentary on Yājñavalkya ends
the Chapter on Gambling and Betting on Animals

Sūlapāni

Yājñavalkya Verse 203

This gambling should be caused to be presided over by a principal officer with a view to get information about thieves This same procedure should be understood to be in the case of betting with animals called *Samānyah*. When gambling is carried on by means of animals such as the ram, the cock etc with a stake on that is known as gambling with animals Although gambling has been forbidden by Manu⁵ in the text

Whoever either gambles himself or bets or causes it (by others), all those "the king shall punish corporally as also those Śādras who assume the "distinctive marks of the twice born, still if a beginning is made anyhow this rule of the law has been stated

Thus ends the Chapter on Gambling and Betting on Animals.

CHAPTER XVIII

Of Abuse.

Now the Author introduces the law of Abuse Its definition has been stated by Nārada¹ 'Abusive language, couched in offensive and
 5 "violent terms regarding the native country, caste, family, and so
 "forth (of a man), are termed 'Abuse' 'Offensive and violent language about a (man's) country &c. violent talk is an *Īroṣa*, *Nyanga* is a disrespectful talk Language which savours of both these, and which is also abusive and thus causes dismay, is called 'Abuse'
 10 There, e g 'the natives of *Gāṇḍa* are fond of quarrelling', is (an instance of) an abuse regarding a country, 'The *Vipras* are an extremely covetous people', is (an instance of) an abuse regarding a caste, 'the members of the *Vistāmtra* family are cruel in their acts' is (an instance of) an abuse regarding a family By the use of the term
 15 *Ādi*, 'and so forth', is also included violent language regarding learned men or men versed in crafts and the like used by means of abusing learning craft &c

Of that, a three fold division has been laid down by Nārada 1
 20 *Nishthura* &c with a view to (be of help in the) discrimination as to the punishments The characteristics of those divisions also have been stated by the same Author² 'That, again, is divided into three species "according as it is *Nishthura* (cruel), *Aśla* (indecent), or *Tura* (sharp)
 "The punishment for each increases in severity respectively according to the nature of the insult offered (2) Abuse combined with
 25 'reproaches should be regarded as *Nishthura* (cruel), abuse couched "in insulting language is *Aśla* (indecent), the learned call an 'abuse *Tura* (sharp) by which a man is charged with an offence 'causing expulsion from caste (3)' "I, upon you fool 'you are 'a rascal', is (an instance of) an abuse combined with reproaches
 30 Here insulting means ungentlemanly language, censurable—e g (imputing) intercourse with a sister etc—language savouring of such words is called an indecent abuse (*Aślam*) And violent language imputing an offence of a heinous nature e g "Thou art a drunkard", is an instance of an abuse called *Tura* (sharp)

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The Author states the penalty for an *Āślîla* (indecent) abuse
Yājñavalkya, Verse 205

The king shall compel a man to pay a fine of Twenty-five *panas* who abuses another saying "I shall have intercourse with your mother or sister."

Mîtākṣharâ:—One abusing thus: "I shall have intercourse with your 'sister or mother', the king shall compel to pay a fine of twenty-five *panas* i. e. which consists of a twenty plus five *panas*.

Śûtapâṇi

Yājñavalkya, Verse 205

Pañcāśatimsatikam, 'Twenty-five, i. e. which consists, of twenty-five *panas* The rest is plain. In some places the reading is 'or similarly a mother' (205).

Having thus stated the rules for men of equal merits and *Varna*, the Author proceeds with a view to declare the law regarding men of varying merits

Yājñavalkya, Verse 206 (1)

(For the abuse of a man) of an inferior (status) (the fine is) half; and for (the abuse) of others' wives or superiors, (the fine is) two-fold.

Mîtākṣharâ:—*Adhameṣhu*, (In the case of an abuse) of men of inferior (status), i. e. relatively to the person abusing by regard to the inferiority in (the mode of) living and such other qualities, the fine is half. In the present context, the full fine being twenty five *panas* as stated in the previous clause, a fine equal to the half of that i. e. twelve and a half should be understood. As for an abuse regarding 'others' wives, a uniform fine of double i. e. twice twenty-five i. e. fifty *panas* should be understood. Similarly, for an abuse of 'Superiors' i. e. of those who are relatively superior, in learning and conduct, to the person (abusing), the fine shall also be fifty *panas*.

Sûlapâni

Yājñavalkya, Verse 206

Of equal varnas by regard to the person indulging in the abuse, and among those of low qualities than the accused, half of twenty five should be taken as the fine. In regard to an abuse of others' wives and of the preceptors or the like, double of that: i.e. fifty in quantity

Varyâh, 'classes', such as the Brâhmanas and the like *Jâti*s, 'castes', such as the *Mâtârahushukta* etc. In regard to these also for an abuse by the higher of an inferior or by the lower of the superior, the administration of punishment should be made. The rest is clear (206)

Having thus stated the penalties in the case of all the *Varnas* the Author mentions a penalty for an abuse among the *Varnas* again but by reference to the *Pratiloma*¹ and *Andoma* order

Yājñavalkya Verse 207

In the case of the abuse of one of a superior class, the fine is two-fold and three fold (respectively), and of one of a lower class, it is to be reduced in the ratio of a half (respectively)

Mitâksharâ—*Apawâdâh*, abuse, i.e. vilification. Abuses by persons belonging to an inferior class are *prâtilomyâpawâdâh* abuses of one of a superior class, *teshu*, in these cases, *e.g.* for a *Kshatriya* or a *Vaisya* abusing a *Brâhmana*, the fines should be understood respectively to be double of that mentioned in the foregoing text² laying down a double: i.e. of fifty *panas*, so that double i.e. a hundred, and a treble: i.e. a hundred and fifty *panas* (shall be understood)

In the case of an abuse of a *Brâhmana* by a *Sûdra*, there is either corporal punishment or cutting off of the tongue, as says *Manu*³ "A *Kshatriya* having defamed a *Brâhmana* shall be fined one hundred" (*Panas*), a *Vaiya*, one hundred and fifty or two hundred, while a *Sûdra* shall make himself amenable for corporal punishment"

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In the cases also of a *Vaisya* and a *Sûdra* who are lower down a *Kshatriya* by one or more than one class (respectively), by a parity of reasoning, the penalty for abusing a *Kshatriya* should be understood to be a hundred and a hundred and fifty (*panas*) For a *Sûdra* abusing a *Vaisya*, a hundred (*panas*, shall be the fine)

1 'In descending and ascending order' Etc Yajñ Acharya Ch IV

2 'e.g. in Yajñ II 200 (1) above p 1249

3 Ch VIII, 267

In the cases of abuse of the lower classes e. g. in an abuse of a *Kṣatriya*, a *Vaiśya* or a *Sūdra* by a *Brāhmaṇa*, of that, *tasmat*, i. e. of the penalty for a *Kṣatriya* abusing a *Brāhmaṇa* viz: of a hundred (*panas*), a reduction of a half should be made in the case of each class respectively, and the remainder i. e. fifty, twenty-five, and twelve and a half (*panas*), should be the fine, respectively, for a *Brāhmaṇa*. That has been stated by Manu: "A *Brāhmaṇa* shall be fined fifty (*panas*) for defaming a *Kṣatriya*; in (the case of the 'abuse of) a *Vaiśya*, the fine shall be twenty-five (*panas*); in (the 'case of) a *Sūdra* twelve." In the case of an abuse by a *Kṣatriya* of a *Vaiśya* or a *Sūdra* the fines respectively shall be fifty, and twenty-five (*panas*). And in an abuse by a *Vaiśya* of a *Sūdra* a (fine of) fifty (*panas*). Thus the law should be understood, *vide* the text of Gautama: "The fine in the (cases) of a *Kṣatriya* and a *Vaiśya* shall be 'similar as in the case of a *Brāhmaṇa* and a *Kṣatriya* (respectively)," and also under the text of Manu: "A *Vaiśya* and a *Sūdra* must be punished 'exactly in the same manner according to their respective castes."

Śūlapāṇi

Yājñavalkya, Verse 207

The meaning is that for an abuse of the *Brāhmaṇa* by a *Kṣatriya*, a hundred, and by a *Vaiśya* of a hundred together with a half. Obviously by making it fourfold two hundred is that for a *Sūdra*.

Manu states a penalty for an abuse of an inferior order: "A *Brāhmaṇa* shall be fined fifty *panas* for defaming a *Kṣatriya*, and a half of fifty for (defaming) a *Vaiśya*, and for (defaming) a *Sūdra* twelve is the penalty. (207).

The Author mentions again a rule regarding a *Niṣṭhura* abuse

Yājñavalkya, Verse 208

For an abuse threatening injury to the arm, neck, eye, or thigh, the fine shall be a hundred; and a half of it in (the case of) the foot, nose, ear, the hand, or the like.

Mitākṣharā:—For an injury to the arm &c. each by a threatening abuse i. e. for threatening by words e.g. in the form "I shall lop off 'your arm &c.'" *Satyah*, a hundred, i. e. a fine limited by a hundred shall be understood. In the case of a verbal threat of an injury to the foot, nose, ear, hand, or the like,—by the use of the word *Adi* 'or the like', (are also included) the hips and the like—*ladardhikah*, half of that, i. e. half of that i. e. a fifty *panas*, should be understood.

Śūlapāṇi

Yājñavalkya, Verse 208

After a threat "I shall lop off your arm," followed by an injury, the penalty is of the extent of one hundred. In regard to the foot etc ;
5 its half, i.e. fifty (208).

Yājñavalkya, Verse 209

When, however, a feeble person speaks like that, he shall be fined ten *panas*, similarly, one able should be asked to furnish security for the safety of him

10 Mitākṣharā :—Moreover, when he who is reduced in strength on account of fever or a like cause, threatens another with the words "I shall lop off your arms and other limbs", or the like, he shall be fined ten *panas*.

15 When, however, one has capacity and threatens, as before, another person who has been reduced in strength, he should be compelled to furnish security for the safety of the weak person for the period after the (infliction of the) fine of a hundred &c, mentioned before.

Śūlapāṇi

Yājñavalkya, Verse 209

20 One, however, who is unable to cause the injury, and speaks in this manner, shall be fined ten *panas*. One, however, who is capable and speaks in this way, after being punished with the aforesaid one hundred, shall be made to give security for the protection of the person threatened (209)

The Author mentions a penalty in the case of a *Tīra* abuse

Yājñavalkya, Verse 210

25 In the case of an abuse involving degradation from caste the fine is that for a middle *Sāhasa*. For (an abuse) imputing a secondary sin, however, he shall be compelled to pay the fine for the lowest *Sāhasa*.

30 Mitākṣharā —In the case of men belonging to the *Varnas*, an abuse of them involving their degradation, e.g. the offence of Brāhmicide &c, the fine shall be as that for a middle *Sāhasa*. For an abuse, however, imputing the commission of a secondary sin, e.g. 'Thou art a cow-killer' or the like, he shall be fined as for the lowest *Sāhasa*

Śūlapāṇi

Yājñavalkya, Verse 210

35 For an accusation of a Brāhmana in the form "you are a Brāhmicide" and the like by a Kṣatriya, the punishment to be administered is the middle amercement. And for an accusation for killing a cow etc, he should be made to pay the first amercement (210).

Yājñavalkya, Verse 211

For an abuse of a *Brāhmaṇa* learned in the three *Vedas*, the king, or the gods, the fine shall be (as for) the highest *Sāhasa*; the middling, (for an abuse) of the castes or the *Pāgas*; and the lowest (for an abuse) of the village or the country.

Mitākṣharā:—Moreover, *Brāhmaṇas* learned in the three *Vedas* i. e. accomplished by learning the *Vedas*. For an abuse of these, of the

kings, and of the gods, the fine shall be (as for) the highest *Sāhasa*. Moreover, for an abuse of the *Pāgas* i. e. associations of the castes such as

the *Brāhmaṇa*, the *Mūrdhūvasikṭa* and others, the fine shall be (as for) a middling *Sāhasa*. In the case of an abuse of a village or the country, the fine shall be understood to be (as for) the lowest *Sāhasa* each.

Here ends the Title of law called 'Abuse.'

Viramītrodaya

Now the chapter of law called 'Abuse' defined by 'Nārada': "Abusive language, caused in offensive and violent terms, regarding the native country, caste, family etc., (of a person) is termed Abuse." The Author discusses that

Yājñavalkya, Verses 204-211

There, however, an abuse is of three sorts. So says *Bṛhaspati*²: "Offensive language or defamation regarding one's country, village, family or the like which is not a fact that, is known as the abuse of the first degree. Referring (in terms of contempt) to a man's sister or mother, or charging with a minor sin, is termed abuse of a middling sort by those learned in the law. Charging a man with taking forbidden food or drinks, or taxing him with a heinous sin is termed abuse of the highest degree, as also maliciously exposing his weakest points."

Dravyam 'fact' i. e. the thing without it, in short false; thus a false assertion as to a sin or a defect in a limb or inferiority of family, an assertion of this nature is lowest; a false assertion about an inferior sin is a middling abuse, and a false assertion as to a heinous sin is the highest kind of abuse. This is the meaning.

There, in regard to the first, the punishment is stated. A true assertion e. g. 'you are blind'; an untrue assertion of a similar character in the case of one not blind; ironical statement i. e. an apparent praise resulting in a censure, as for example, in the case of a

blind person etc. the statement, 'you are lotus-eyed', or the like. If by these statements one reviles another in an ironical manner in regard to a defect in a limb or an organ, or being affected by a disease or the like, then he shall be punished with thirteen and a half *i. e.* a half and twelve *panas*. This moreover is (a rule) in regard to those of the same caste. That has been declared by Bṛhaspati²: "When two persons abuse each other, their punishment if they are equal in caste and merits has been approved in the Śāstra to be thirteen and half *panas*; in the case of equals the penalty is equal; of one who is inferior, the same is double, and for a superior, half has been ordained for a mutual abuse."

As regards abuse concerning a mother etc. Manu³ states a special rule: "He who defames the mother, the father, the wife, the brother, the son or the teacher, and also he who does not give way to the preceptor shall be compelled to pay one-hundred *panas*." This according to Mitākṣharā⁴ is applicable in the case of a mother etc. when they are guilty, and in the case of a wife when she is innocent (204).

'I shall have sexual intercourse with your sister or mother and have been having the enjoyment', one abusing thus and causing pain to one equal in caste, the king shall compel to pay the penalty of twenty-five *panas*. The use of the word *vā*, 'or', is made indifferently; thereby 'I shall have intercourse with your daughter or wife even' and the like (form of abuse) also is included. The word *ha* is used simply for filling up the line (205).

The penalty of half by thirteen *panas* or twenty-five *panas* which is mentioned above in the case of equals shall be half in the case of inferiors when abused; in the case of others' wives or superiors, it shall be double of that stated for equals.

The Author mentions regarding mutual abuse in the case of persons who are relatively higher and inferior in caste, merit, and class also. *Dandā* 'punishment' etc. *varṇāḥ* 'classes', such as the Brāhmaṇa etc; *jātiḥ*, 'castes', such as the *Mādhāvastika* and others, *uttarādharāḥ*, 'superior and inferior', *i. e.* higher and lower. In the case of mutual abuse between these the determination of the punishment should be specially made; as for example for a Brāhmaṇa for

1. See note above.

2. Ch. XX. 5.

3. Ch. VIII. 276.

4. The print of the Vīramitrodaya is thus 'समवेतिनिरपराधत्वे अपराधत्वे वेदविनि विनासतः' apparently a slip as-is confirmed by the Mitākṣharā where the reading is सपराधेयुः समवेतिनिरपराधत्वे etc.

abusing a *Mūrdhāvasikta* who is inferior to a *Brāhmana* and is superior to a *Kshatriya* shall pay half as much more the penalty as is laid down for the abuse of a *Kshatriya*, and less by a quarter of the penalty for the abuse of a *Brāhmana* (206).

'Half in the case of inferiors' as has been stated above; as if mentioning this as an illustration, the Author mentions a special rule in the case of persons still lower and much higher *pratilomiyeti* etc. In the case of an abuse of one of a superior class by one of those who are lower than the lowest, the punishments are respectively four-fold etc. In the case of an abuse of an inferior class by one of the highest class respectively of the lower ones, the punishments shall respectively be half, half of the half, and in the descending order. Thus such punishment as is prescribed in the case of an abuse of a *Brāhmana* by a *Brāhmana*, quadruple of that shall be for a *Śūdra*, triple of it for a *Vaiya*, and double of it for a *Kshatriya* shall be the punishment for the abuse of the *Brāhmana*. The punishment which is prescribed for the abuse of a *Brāhmana* by a *Brāhmana*, the half of that shall be for the abuse of a *Kshatriya*, quarter of it for the abuse of a *Vaiya*, and the eight part for abusing a *Śūdra* shall be the punishment for a *Brāhmana*. Thus should be understood elsewhere (207).

For an abusive threat 'I shall cut off your arm', or of a like nature, and threatening the destruction of an eye etc., the penalty shall be hundred *panas*, and for an abusive threat of injury to the foot etc., half of a hundred shall be the punishment in the case of persons equal in caste. By the use of the word *ādī*, 'et cetera', is included hips and other minor organs (208).

This, moreover, to cut off the arms etc., is in regard to one who is able; one, however, who is weak and indulges in such abuse shall be punished ten *panas*. In the case of one who is very strong and indulges in the threat of an injury should be compelled to give security for the protection of the whole and for the avoidance of the arm-cutting etc. By the use of the word *tu* is excluded one who is mightier still. By the use of the word *tathā*, i. e., 'also', is included the statement that in the absence of a security he should be kept under restraint by the king. Here also the more or less is to be determined by regard to the distinction of the best and the lowest (209).

The Author now mentions with regard to abusive threats of the first, middlemost and the lowest class. For an accusation involving

degradation such the offence of Brāhmicide or the like, for such a charge the penalty is as for the middle *sāhasa*. For an abuse, however, imputing the commission of a secondary sin, the penalty as for the lowest *sāhasa* should be imposed. That for the middle *sāhasa* has been noted before. This, moreover, is with reference to persons of the same quality and the like. By regard to the distinction of the higher or lower class, more or less should be inferred (210).

For an abuse of the *Brāhmanas* learned in the three Vedas *i. e.* accomplished scholars in the three Vedas, as also for the defamation of the king and of the gods also. Thus, by the use of the word *dati*, 'etc.', is included the cutting of the trees etc. For an abusive language against a *Brāhmana*, that for the highest *sāhasa*. For an abuse of the caste, the *pūgas* etc. *i. e.* the associations of the *Mūrdhāvasikta* and the like, as that for the middle *sāhasa*, and for an abuse of the village or the country, the penalty for the first *sāhasa* shall be imposed. For an abuse of *Kṣatriyas* and the like, a double etc. should be understood. In regard to an abuse involving degradation *Manu* says: "For a mutual abuse, however, by a *Brāhmana* or a *Kṣatriya* the punishment should be administered as ordained. On the *Brāhmana* the lowest, and on the *Kṣatriya* the middlemost amercement."

In connection with the *Śūdras* *Bṛhaspati*² says: "For reviling the *vipras* he is liable to have his tongue cut off."

So also "For one pronouncing their names and castes with malicious intent, a red-hot iron spike of ten fingers in length should be ordered in his mouth." This, however, appears to be in regard to excessive abuse actuated by habitual malice.

Here ends the Chapter called Abuse

Śūlapāṇi

Yājñavalkya, Verse 211

For those who indulge in an abuse of the learned in the three Vedas and the like, the highest amercement is the penalty; of the *jātis* such as the *Mūrdhābbishikta* &c., of the association of tradesmen and the like, the middle amercement, and of the village or the country, the first amercement, shall be the punishment.

Thus ends the Chapter on verbal Abuse.

¹ 1. Ch. VIII. 277.

² 2. Not found in the published extracts of *Bṛhaspati*.

CHAPTER XIX.

Assault.

Now begins a chapter called Assault. Its characteristics have been stated by Nārada¹: "Injuring the limbs of another with a hand, "foot, weapon or otherwise, or defiling him with ashes or the like," is 5
"termed Assault". That injury i. e. striking and causing pain to another's limbs i. e. (also) to movable and immovable property, by means of the hand, foot, weapon or otherwise—by the use of the word 'otherwise' *Ādi* i. e. (also) by means of stones &c—; similarly that defilement by means of ashes—by the use of the word *Ādi* 'or the 10
like', by means of dust, mud, faeces also—which causes mental pain on account of the (vile) touch; both these are known as 'Assault.'

That by means which an injury is caused is a *danda*, i. e. the body; a *pārushya* i. e. inimical behaviour by means of it toward^s movable property or the like, is called *Danda-pārushya* (Assault). 15

Having, moreover, stated its threefold division, distinguished by the raising of the hand &c, a second threefold division again has been stated by the same Sage by regard to the threefold acts regarding articles of small, middling, or superior value: "There are, three 20
"species of that also as it may be either small, middling, or extreme, "according as it consists in the raising (of a hand or weapon) or in "an unexpected attack, or in striking a wound (5). Stealing articles "of small, middling, or superior value, is called the three *Sāhasas*, "there, the thorny weeds should be extirpated." "An unexpected attack" i. e. striking one who has not the least warning (about it) 25
Only three *Sāhasas* i. e. three kinds of *Sāhasas*. i. e. daring deeds i. e. Assaults.

Moreover, when abuse or assault has once commenced, whoever of the two contending parties, forbears, for such a one, not only that there is no punishment, but he is indeed to be respected Similarly' 30
for one who first began the quarrel, there shall be a higher punishment. Also when after the quarrel has commenced, he who follows up his attack is liable to be punished.

And when it is not possible to discriminate between the guilt of the two, the fine shall be equal. Moreover, in the case of an insult offered to the Āryas by the Ś'rapachas and the like, the Good¹ people themselves have authority to levy a fine; if they are unable, the king should indeed chastise them, and not (merely) receive a fine. Thus, the five rules of procedure have been mentioned² by the same Sage :

"For both kinds of these, a five-fold rule of procedure has been laid down: When, after an altercation has once commenced, and both have been excited to a high pitch, he who forbears is respected; and he who pushes on (the quarrel) deserves punishment. He who is the first to offer an insult is decidedly a criminal; he who returns the insult is likewise culpable; but for him who began the quarrel, the punishment shall be heavier (9). When both parties are implicated equally, he of the two shall receive punishment who follows up his attack, whether he was (originally) the aggressor or the defendant (10). When two parties have been guilty of insult, and both have commenced to quarrel at the same time, they shall suffer the same punishment, in case that no difference (in their respective culpability) becomes apparent (8). If a Ś'rapāka, Śhandha, a Chandāla, cripple, one who maintains by killing (beings), an elephant-driver, a Vratya,³ a slave, transgress their limit and offer an insult to the teacher,⁴ preceptor, or the king, they shall instantly be punished corporally (11 and 12). Any one of the better class whom these persons offer an insult, may himself administer the punishment. The king has⁴ nothing to do with their punishment (13). For these people are the refuse of human society, and their property (likewise) savours of impurity. Therefore the king shall inflict corporal punishment upon them, and he must not (merely) punish them with a fine (14)."

1. The good men themselves shall punish them. But if they are unable, then the king shall chastise them and not merely remit with a fine. *Atahāya*.

2. Ch. XV. 7-14.

3. One deprived of the caste for the non-performance of the ceremony of initiation. These are again admitted into the caste by the performance of a rite known as the *Vratya-soma*. It is also the descriptive name used in reference to the caste which originated from a Śūdra father and a Kṣatriya mother.

4. Dr. Jolly reads thus: गुरुं वा पित्रे वा (11) गुरुं वा पित्रे वा &c. (12) "or one who treats a Guru or spiritual teacher with disregard" "should offend a superior &c" (12)

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Premising the necessity of establishing an assault of the character thus described the Author mentions the means of dealing out punishment when there is a doubt about it

Yājñavalkya, Verse 212

In the case of an assault to which there were no witnesses the point at issue should be determined by means of marks, by probabilities, by popular report and the like, lest the mark should be counterfeited 5

Mitāksharā—When any one complains to the king thus, "I was beaten by such a one in secret," then *chūṣaṇa*, by means of marks, i. e. signs indicating colour &c, on the body, *yaktyā*, by probabilities, by regard to the relation of cause and effect, *āgamena*, popular report, i. e. from the talk among the people—by the use of the word *cha*, 'and' 'the like,' by an ordeal also—the determination should be made bearing in mind the possibility of a counterfeit mark. 10

Vīramitrodaya

Now the Author begins the chapter on Assault. Its characteristics have been mentioned by *Nārada* "Injuring the limbs of another "with a hand, foot, weapon or otherwise or defiling him with ashes or "the like is termed assault. By the use of the word *ādi*, 'and the like,' is included the cutting of the trees etc 15

There first, on a doubt arising whether one has committed the assault or not, the Author mentions the means of determining the same 20

Yājñavalkya, Verse 212

For an attack for which there are no witnesses i. e. (one) made in secret, and when the assault was made with the feet and weapons, and a denial is set up, such a dispute should be decided i. e. determined, by means of marks such as scars etc. on the body, by probabilities taking into consideration the motive etc, by knowledge i. e. by popular report. By the use of the word *cha*, 'and,' by ordeals *Kuta* etc i. e., by others than by counterfeit marks. By the use of the word *tu*, 'however,' the Author excludes the imposition of punishment etc for mere verbal accusation, such as 'I was beaten by him' (212) 25

1 There is a mistake in the print of the text at p. 131 H for *एव प्रमाणं* &c read *एव प्रमाणं* etc
 2 Ch. XV. 4

Śūlapāṇi

Yājñavalkya, Verse 212

Having assaulted another at a place devoid of witnesses and smearing one's body with blood, when one asserts "I have been beaten by him", there, for fear of counterfeit marks the decision is to be given by regard to unadulterated marks and also by the evidence of truthful people. Bṛhaspati¹ states the characteristics of an assault: "Injury by means of a staff, a stone, a club or ashes, mud or dust, or attacking with weapons, "is termed assault" (212)

- 10 Having thus determined the particular means, the Author mentions a special punishment

Yājñavalkya, Verses 213 and 214

- 15 For throwing ashes, mud, or dust the punishment recorded is ten *panas*; and double that amount for attacking with an impurity, a heel, a spittle (213)

- This if (the offence be committed) against one of an equal class. But (it would be) double (if the offence be committed) against another's wives, or against persons of higher orders; if, against persons of lower classes, a half of the fine; there shall be no fine for an offence committed through infatuation, drunkenness, or the like (214).

- Mitākṣharā:—He who throws ashes, mud or dust at another should be compelled to pay a fine of ten *panas*. By impurity is also included tears, phlegm, nails, hair, ear-wax, rheum of the eyes, and leavings at the meals. Pārśbhī, *heel*, the hind part of a foot. Nishṭhyūtam, *a spittle*, i. e. the water thrown out of the mouth. For an assault with these, a fine twice of that i. e. the fine mentioned before viz. (of) ten i. e. twenty *panas*, must be understood. Again, a special rule has been stated by Kātyāyana in cases of Assaults with faeces &c. "It is declared to be four-fold, when the assault is committed by (means of throwing) the vomit, or urine, or faeces or the like, on the lower extremities; six-fold if thrown upon the middle extremity of the body; but eight-fold if upon the head." By the use of the term *Ādī*, 'or the like,' are included fat, semen, blood, the marrow of the bones, and flesh &c. (213).

- 35 The fine thus mentioned before should be understood in the case of persons of the same tribe. In the case of assaults on the

wives of others, it applies generally without differentiation. Also, (in the case of assaults) against persons of a higher order *i. e.* higher in learning or conduct as compared with (the actor) himself, a fine must be understood which would be double in amount of that mentioned before *i. e.* of ten *panas* and also of twenty *panas*. In the case of persons of a lower class *i. e.* inferior in learning &c. as compared with himself, a fine half in amount of that mentioned before *i. e.* five *panas*, or ten *panas* must be understood. 5

Mohah, infatuation, means mental aberration. *Madah*, drunkenness, is the particular condition (which is) produced by the drinking of intoxicating liquor. By the use of the word *Ādi* the possession by a spirit &c. (also are included). When under the influence of these an assault is committed, no penalty shall be imposed even when the ashes etc. (actually) touch the body (214). 10

Vīramitrodaya

15

Now after having thus determined (the fact of) the assault as the next step, the Author states the penalties according to circumstances up to the end of the chapter

Yājñavalkya, Verses 213-14

For a bodily assault upon another such as by ashes, mud or dust, the penalty for the assailant shall be ten *panas*. For an attack with an impurity such as tears etc., or with a heel *i. e.* the hind part of the leg, or with a spittle *i. e.* the excreta of the mouth, the penalty is double of ten *panas* (213). 20

The penalty in this manner should be observed in the case of the equals in all the *varnas*. For an attack on others' wives or upon members of the higher *varnas*, in regard to an offence of this character, the punishment shall be double of that stated for the equals. In regard to a similar offence towards members of lower *varnas*, half the penalty of that stated for the equals should be imposed. *Mohah*, 'infatuation', *i. e.* ignorance; *madah*, 'drunkenness', such as by liquor etc. By the use of the word *Ādi*, 'or the like', is included arrogance. By these even, if assault is made with ashes etc., there is no punishment. By the use of the word *cha*, 'and', is indicated the addition of treble and quadruple punishments in the case of higher and higher degrees. It shall be four-fold when (the attack is committed) by means of urine, vomit, or fish or the like; six-fold, if on the middle part of the body; but eight-fold, if upon the head. The quadruple etc. is to be understood as of ten *panas* (213-14), 25 30 35

Śūlapāṇi

Yājñavalkya, Verse 213-14

When the ashes etc. touch another's body the penalty is ten panas.
For a touch of the impurities also the same doubled (213).

5

Yājñavalkya, Verse 214

Similar is the penalty as characterised above in the case of persons of the same caste; in the case of others' wives or of persons of superior caste it is two-fold. For those of the lower caste, half. When it is done through mistake etc. (there is) no punishment (214).

10

The Author mentions a penalty in cases of assault by inferior persons (against superiors)

Yājñavalkya, Verse 215

The limb of one who is himself not a *Brāhmaṇa*, which causes injury to a *Pīpa*, must be cut off. When it is raised, the lowest amercement, (is laid down), and half of it in (the case of) a touch.

15

Mītākṣharâ:—The limb of one who is (himself) not a *Brāhmaṇa*, *abrāhmaṇasya*, i. e. of a *Kṣatriya* or the like, viz. the hand, the foot etc. which causes injury to the *Brāhmaṇas*, that should be cut off. Of a *Sūdra* causing injury to a *Kṣatriya* or a *Vaiśya* even, the punishment indeed is the cutting off of the limb: "With whatever limb a man
"of a lower class does injury to one of a higher class, even that limb of
"his should be cut off;" this is the command of *Manu*¹. From the rule as to the cutting off of the limb of a *Sūdra* for an offence against any one of the twice-born tribes, by a parity of reasoning, the same punishment would accrue to a *Vaiśya* causing any injury to a *Kṣatriya*.

25

Udgīrṇe, when raised, i. e. when a weapon etc., is raised with a view to strike, the punishment for the first amercement must be understood. Of a *Sūdra*, however, even for a raising (of the hand etc.), the punishment, indeed, is the cutting off of the hand etc., vide the text of *Manu*²: "For raising a hand or a stick, he deserves the punishment
"of having his hand cut off."

30

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Sparśane, for touching, a weapon etc. for raising it, however, *tadardhikah*, half of it, i. e. half the punishment for the lowest *Sāhasa*, must be understood. In cases of assaults by means of ashes etc. by a

Kṣatriya and a *Vaiśya*, the punishment should be determined by regard to the rule stated in the text: "In cases of the abuse of one of a superior class, the fine is two-fold, and three-fold." Even, there, a *Śūdra* shall, indeed, have his hand cut off, *vide* the text of *Manu*: "If out of arrogance he spits (on a superior) the king shall 5
"cause both his lips to be cut off; if he urines (on him), the penis;
"if he breaks wind (against him), the anus."

Sūlapāṇi

Yājñavalkya, Verse 215

The hand etc. of a non-Brāhmana causing injury to a Brāhmana 10
should be cut; for an attempt made, however, the first amercement; but
for touching a weapon, as an attempt,—half (215).

Having thus stated the punishment for an offence in the case of persons of lower classes, the Author proceeds again in regard to a person of the same caste 15

Yājñavalkya, Verse 216

For holding up a hand or a foot, the punishment shall be ten and twenty *panas* (respectively). For threatening each other with a weapon, the punishment shall be the middle amercement for all.

Mītākṣharā:—For raising a hand or a foot with the object of 20
striking, the fine shall be understood respectively to be ten *panas* or
twenty *panas*. For raising a weapon with the object of striking each
other, in the case of the classes, the middle amercement shall be the fine.

Vīramitrodaya

Yājñavalkya, Verses 215-16

The limb of a *Kṣatriya* such as hand, foot etc. which causes 25
injury to a Brāhmana by beating etc. should be cut off. By the use of
the word *cha*, 'and,' all the *Vaiśyas* and the *Śūdras* causing injury to
Kṣatriya; and the limb of a *Śūdra*, causing injury to a *Vaiśya* are
included. *Kena kena*, 'by whom?' *Vide* this text of *Manu*: "With 30
"whatever limb a man of a lower class does injury to one of a higher
"class, even that limb of his should be cut off;" this is the command of
Manu. By the reading of the word *tu*, 'however', is excluded the
cutting off of the limb of a Brāhmana.

Udgārṇe, 'when raised', i. e. when uplifted for the purpose of an attack, in the case of a weapon etc. the penalty is as for the first *sāhasa*. For a mere touch of the weapon, however, by oneself for the purpose of raising it, the penalty is half of that for the first *sāhasa*. The first *sāhasa*, moreover, is for one other than a Śūdra. In connection with a Śūdra Mann¹ having observed: "for raising a hand or a stick, "he deserves the punishment of having his hand cut off."

In the case of members of all the *varṇas*, for the offence of raising the hand mutually against each other, the punishment is ten *paṇas*. For an attack with the foot the punishment is assessed at twenty *paṇas*, and for raising a weapon, the punishment is of the middle *sāhasa*. By the first use of the word *tu*, 'however', is excluded the falling of the weapon, and by the second use of the word *tu*, is excluded the penalty stated in the case of unequal castes (215-16).

Śūlapāṇi

Yājñavalkya, Verse 216

For an attempt for an attack with the hands or the feet, the punishments respectively are ten and twenty *paṇas*; for an attempt with a weapon, the middling amercement (216).

Yājñavalkya, Verse 217

For pulling out the foot, the hair, the clothes or the hand (of another), ten *paṇas*; for causing pain by violently pulling a man caused to be tied in his clothes and trampling him under the foot, a hundred (*paṇas*) is the fine.

Mitākṣharāḥ:—Moreover, he who catches hold of the foot, the hair, the clothes, or the hand, or any of these, and pulls them out, *ullūcchati*, i. e. violently plucks them, such a one shall be fined ten *paṇas*. Causing pain, pulling, tying in a cloth and trampling under foot (all joined together, make up the compound expression) 'Causing pain, pulling, tying in a cloth and trampling under foot'; for doing that, a man shall be fined a hundred *paṇas*. The purport is this: He who after tying in a cloth, and violently pulling, tramples another under foot, such a man should be compelled to pay a hundred *paṇas*.

Śūlapāṇi

Yājñavalkya, Verse 217

For pulling up the leg etc. the punishment shall be ten *paṇas*. Injury by pulling and tying with a cloth these together make the conjunct compound, 'one who ties round by the upper cloth'; and after tightening pulls up with the foot, for him the penalty shall be one hundred *paṇas* (217).

Yājñavalkya, Verse 218

The man causing pain without shedding blood by means of a stick or the like, shall be fined thirty-two *panas*; double (that) at the appearance of blood

Mitākṣharā:—Moreover, he, however, who strikes mildly with a piece of wood or mud so that no blood is shed, such a one shall be fined thirty-two *panas*. When, however, on account of hard beating, blood is shed, then he shall be fined twice thirty-two i. e. sixty-four *panas*. A special rule, moreover, has been pointed out by Manu¹ in the case of the breaking open of the skin, flesh &c: "He who breaks the skin shall be fined a hundred, as also one who draws out blood. He who breaks the flesh, six *niṣkas*, while he who breaks a bone shall be banished."

Śūlapāṇi

Yājñavalkya, Verse 218

For severely attacking with a wood the punishment shall be thirty-two *panas* if blood does not appear. For its appearance, however, the penalty is double (218).

Yājñavalkya, Verse 219

For breaking a hand, a foot, or a tooth, and for cutting an ear or nose, the fine shall be the middle (amercement); similarly for laying open a sore and also for beating almost to death.

Mitākṣharā:—Moreover, for breaking a hand, a foot, or a tooth, in each case; as also for cutting an ear or the nose, (in each case); for laying open a healed-up sore; and for beating in such a manner that the man becomes almost dead, the middle amerement shall be understood. Here, the similarity of acts should be ascertained by regard to the result of the act.

Śūlapāṇi

Yājñavalkya, Verse 219

For breaking the hand, piercing the nose, opening up a healed scar, or for striking one who is almost dead, the penalty is the middle amerement (219).

Yājñavalkya, Verse 220

For a restraint in respect of motion, eating, or speech; for an injury to the eye and the like; for a fracture of the neck, the arm, or the thigh, the middle amerement.

Mitākṣharā:—Moreover, for restraining motion, eating, or speech, for an injury to the eye—and by the use of the term *Adi*, to the

tongue also—; *landhārā* means the neck; an arm is wellknown-
salāhi means the thigh; for fracturing each of these, the fine shall be
the middle amercement.

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Śūlapāṇi

5

Yājñavalkya, Verse 220

For obstructing the movements, etc. piercing the eyes etc or for
breaking the neck and the like, the punishment shall be the middle
amerement (220).

Yājñavalkya, Verse 221 (1)

10

When several assault a single person, the fine for them shall be double
of that already mentioned.

15

20

25

Mitākṣharā :—Moreover, when however, several (people) com-
bining together break the limb of one (man), or do any other similar
act, then whatever fine has been laid down for the particular offence, a
fine double in amount of that must be understood in each case res-
pectively. On account of the extreme aggravation of these offences,
even in the cases of offences committed against persons of inferior
classes, or of higher classes respectively, the reduction or increase is
to be determined by reference to this very law of punishment in the
order mentioned in regard to the offence of abuse and the offences
enumerated thereafter, and laid down in regard to persons of the
same class, *vide* the text :¹ “ Whatever punishment has been men-
tioned for the offence of abuse (and the like) committed against
persons of superior or inferior classes respectively, the same penalty
shall respectively be inflicted by the King in the offences of assault
(and the like) also ”

Vīramitrodaya

(For an assault) on members of the same caste the Author states

Yājñavalkya, Verses 217-21 (1)

30

For pulling out i. e. pulling with a jerk the feet etc. of others the
penalty is ten *paṇas*. For causing pain i. e. for causing injury by
pressing one's foot against one who has been tightly tied by a cloth
and pulled, the penalty is a hundred of the *paṇas* (217).

1 Author not known. Bālabhāṭṭa assigns it to Manu. But it is not found
in the available editions of Manu.

When a man assaults another with a wood etc so that blood is not seen, he should be condemned to pay thirty two panas, for the appearance of the blood, however, he should be made to pay double. In the case of breaking open of the skin etc Manu¹ states a special rule "He who breaks a skin shall be fined a hundred as also one "who draws out blood. He who breaks the flesh six *nishkas*, while "banished shall be he who breaks the bone (218)

For a wound of the three organs such as the hand and the rest each, for cutting of the nose, for opening up a healed scar, and for beating in such a manner that he would be as if dead the penalty is the middle *sāhasa*. By the use of the word *tathā*, 'similarly', is included the cutting of the finger (219)

Cheshṭeti, 'motion etc', for causing a restraint in respect of motion, eating or speech or any of these for piercing the tongue etc as also for an injury to the neck, the arm or the thigh for an injury to any of these, the punishment is the middle amercement. By the use of the word *ha*, 'and', is included the heel and the like (220)

Where many attack one, there the penalty which has been stated for one as an assailant, double of that is the penalty for the other. This is the meaning. Here the higher or lower punishment or the distinction of higher or lower is not to be observed [221 (1)]

Yājñavalkya, Verse 221 (2)

That which had been taken away during the scuffle shall be restored and a fine double (in value) of that

Mitāksharā —During the continuance of the scuffle whatever has been taken away by a party should be given back by him. Also a fine double the amount (in value) of the thing taken away must be paid as penalty for the deprivation

Vīramitrodaya

Moreover

Yājñavalkya Verse 221 (2)

During the continuance of a fight what has been taken away by one as belonging to another should be returned by him to the other, and on that account a penalty of double the value of that as for taking it away should be taken by the king [221 (2)]

Sūlapāni

Yājñavalkya, Verse 221

For many combining together and beating one, the punishment shall be double of those stated. And in the scuffle whatever has been taken away from any one that shall be given to him, and double of that should be given to the king as a penalty (221)

Yājñavalkya, Verse 222

He who causes bodily injury, shall pay the expenses incidental thereto, and shall also pay the fine mentioned in regard to the particular assault

10 *Mitākharā* —Moreover, he who causes injury (to another) by beating, shall pay such expenses as may be incurred for dressing and curing the wound, and for medicine and special diet therefor. The fine to be paid is the fine imposed for the particular kind of assault in which the wound was caused, and not merely the amount of the ex-
15 penses incidental to the wound

Vīramitrodaya

Yājñavalkya, Verse 222

He, however, who causes a wound etc. by beating shall be compelled to pay the amount of expenses incurred for the complete
20 recovery of the one on whom a wound has been caused. The meaning is he should be compelled to pay as much money as would be required for procuring medicine etc. for him. In places where a wound etc. has been caused, not only the payment for it, but also a penalty should be caused to be paid by him as has been prescribed generally for the
25 particular quarrel. The use of the word *cha* 'and', in the cumulative sense excludes option (222).

Sūlapāni

Yājñavalkya Verse 222

30 One who causes pain to another by breaking the hand, foot, etc. such a one shall pay the expenses for the restoration i.e. for as much period as is required for him to be under nursing etc. to be able again for such interval. That punishment which has been stated for a scuffle that also he shall be made to pay (222)

Having mentioned the penalties for assaults upon the limbs of others, the Author now mentions the penalty for the spoliation of external property¹

Yājñavalkya, Verse 223

For striking at the wall, or for boring or breaking or demolishing it, he shall be made to pay a fine of five, ten and twenty *panas* respectively, and also the expenses (incidental thereto). 5

Mītākṣharā :—For striking at a wall with a club or other similar weapon, or for making a whole in it, or for breaking it into two (sections), the fine shall be understood to be five *panas*, ten *panas*, and twenty *panas* respectively. For demolishing a wall, moreover, all these three fines shall be inflicted cumulatively. Also the amount (of expenses) for rebuilding it shall be paid to the owner. 10

Sūlapāṇi

Yājñavalkya, Verse 223

For an attack with a club etc, or a wound with a stick, or for piercing with the sword, one should be compelled to pay respectively five, ten, and twenty *panas*. Similarly for pulling over a wall or the bricks, etc by the reasoning of juxtaposition, twenty *panas* also should be declared and he should also be made to pay the expenses for the restoration (223) 15, 20

Yājñavalkya, Verse 224

One throwing in a house a thing (which is capable of) causing bodily injury or deprivation of life shall be compelled to pay sixteen *panas* for the first, and the middle amercement for the second offence (respectively).

Mītākṣharā :—And again, one throwing into the house of another things which cause bodily injury e. g. thorns &c shall be compelled to pay sixteen *panas*; while one throwing things causing deprivation of life e. g. poison, snake &c shall be punished in the middle amercement. 25

Sūlapāṇi

Yājñavalkya, Verse 224

For throwing thorns and other such things in the house as also a snake and the like, for the first he shall be compelled to pay sixteen *panas*, and for the second the middle amercement (224) 30

1. बहिर्गुण वर्धनम्. The offences mentioned hitherto refer to a man's अन्तर्गुण, internal property, such as hand, foot &c, now the Author mentions offences relating to his external property. Shortly stated and in terms of the Indian Penal Code, the offences enumerated above are Offences against the Body. The author now enumerates Offences against Property. 32

The Author mentions the punishment for assaulting beasts

Yājñavalkya, Verse 225

For causing pain, drawing blood as also for cutting off branches, or a limb of minor beasts, the fine shall be one beginning with two *panas* and upwards.

- 5 Mitākṣharā:—In the case of minor beasts such as the goat, the sheep, the deer and the like, for beating, causing injury, and drawing blood; or a *sākhāṅgachhedane*, for cutting off the branches—by the word *Sākhā*—branch—are indicated such limbs as are without the circulation of life in them; limbs such as the horns &c.—*anḡāni*, limbs, such as
- 10 the hands, the feet, and like others. *Sākhā* (A branch) and *aṅga* (a limb) joined together make up the compound expression *Sākhāṅgam*. For cutting that, the fine is (laid down) commencing with two *panas* &c. A fine which has in it two *panas* is a fine of two *panas*. That series of punishments in which a sum of two *panas* is the first i. e. the beginning—is a fine 'beginning with two *panas* and
- 15 upwards.' That series of fines moreover is two *panas*, four *panas*, six *panas*, eight *panas*, and in a similar series, and not as two *panas*, three *panas*, four *panas*, five *panas* &c.

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- If it be asked how is that? the answer is: By regard to the
- 20 heinousness of the offence, the three kinds of higher punishments are to be understood as being higher than the lowest punishments. There, also, instead of resorting to the numbers three &c. which have not been specifically mentioned, it is better to get at the aggravated penalty by the repetition of the number two which has been specially
- 25 mentioned. Thus there is no fault.

Śūlapāṇi

Yājñavalkya, Verse 225

- For causing injury to inferior animals such as the goats, sheep, etc. for causing blood, and also for cutting the branches, such as the horns or
- 30 the limbs or feet etc. the punishment shall respectively be in doubling order beginning with two *panas*. At some place the reading is double of the double in order (225).

Yājñavalkya, Verse 226

For cutting off (their) genital organs, and for causing death, the middle amercement, as also the price. In the case of superior animals, the fine shall be double in similar cases.

Mītākṣharā:—Moreover, for cutting off the genital organs of minor beasts, and for causing their death, the fine shall be the middle amercement; and the price shall be paid to the owner. In the case of superior animals, however, *e. g.* the cow, elephant, the horse, and like others, *eteṣhu sthāneṣhu*, for similar cases, *i. e.* for beating, or drawing out blood or doing similar acts, a fine double of that mentioned before should be understood.

Śūlapāṇi

Yājñavalkya, Verse 226

For the cutting of the genital organs of lower beasts or for killing them the middling amercement and the price should be caused to be paid to the owner of the animal. In the case of higher animals such as the cow &c. double the amount of that stated before should be levied (226).

The Author mentions the penalty for an injury to immovable property

Yājñavalkya, Verse 227

For cutting off the branches, or the trunk, or uprooting entirely the trees which throw down branches having sprouts, as also trees which are the means of livelihood, the fine is twenty *panas* and (its) double.

Mītākṣharā:—*Prarohāḥ*, sprouts, *i. e.* shoots, branches having these are 'branches having sprouts'; *i. e.* those branches which when cut off, develop again at each knot of trees, like the banyan and the like such trees, are called *prarohatākināḥ*, trees which throw down branches having sprouts; for cutting off the branches of these. That from which the original branches shoot out is called the trunk; for cutting that, as also for cutting up a tree together with its roots, there shall be a fine beginning with twenty *panas* and increased by twofold of the previous one.

This is what is (intended to be) said: The three penalties of fine *viz.* twenty *panas*, forty *panas*, and eighty *panas* are inflicted respectively for the offences of the cutting off of the branches and for the offences following in their order.

And even of trees which do not 'throw down branches having sprouts,' but which are a means of livelihood *e.g.* the mango tree and the like, fines similar to those mentioned before must be understood for acts similar to those specified above, *i.e.* in the case of trees which are not
5 the means of livelihood, nor do throw down branches having sprouts.

Śūlapāṇi

Yājñavalkya, Verse 227

For lopping off the branches of trees, the roots of which enter the ground such as the *vata* etc. or of trees such as the mango and the like
10 which are the source of livelihood of the people, beginning with twenty *panas* the punishment should be increased in doubling order of the one prior in the case of the one following (227)

The Author mentions a rule regarding particular trees

Yājñavalkya, Verse 228

15 In the case of trees growing in a sacrificial place, a cemetery, a boundary, a sacred place, or a temple, and trees well known, the fine is two-fold.

Mitākṣharā:—For cutting off the branches or for doing like acts in regard to trees growing on a sacrificial place or in a similar other place, a fine twice that mentioned before. So also in the case of trees which are
20 well known such as the *pippala*,¹ *palāśa* and the like, the fine is two-fold.

Śūlapāṇi

Yājñavalkya, Verse 228

25 Chaitya is a tree growing on a high place; *mṛta*, *i.e.* 'well-known', for the cutting of the trunk etc. of these twenty (*panas*) is the consequent (inference) (228).

The Author mentions a rule regarding creepers etc.

Yājñavalkya, Verse 229

30 In the case of injury in the aforementioned parts to *Gulma*, *Guchchha*, *Kṣhupa*, *Latās* (creepers), *Pratāna*, *Oṣadhi*, and *Vimūḍh*, the fine is half of that before mentioned.

Mitākṣharā:—*Gulmāḥ* such as the *Mālātī* plant and the like, are those creepers which do not develop into any considerable length. *Guchchhas*

1. *Pippala*—is the holy fig tree. *Ficus Religiosa* *Palāśa* also called *Kimśuka* *Butea Frondosa*, see p. 1151 n. 5 also p. 914 n. 3 (above)

2 These are the several groups of creepers and shrubs with minute distinctions which have been indicated by Viṣṇuśāstra further on.

3. *मालती* (*Mālātī*) *Echua Caryophyllata*, is a kind of jasmine with white fragrant flowers.

are not in form like creepers, nor are they generally straight and smooth, e.g. the *Kurantaka*¹ plant and like others. *Kshupah* e.g. the *Karatira*² plant or the like, which are generally straight and smooth. *Latāh* or creepers which develop into considerable lengths such as the grape, *Atimukta*³ &c. *Pratānāh* are creepers without knots or offshoots, and growing straight such as the *Sāruā*⁴ and others. *Oshadhayah* are those which develop fruit such as the paddy plant etc. *Virudhah* are those which even when cut grow and develop in various parts, such as *Gulūhā*⁵ and the like. 5

In the case of these, for injuries as aforementioned such as cutting & e. lopping off, a fine half of that mentioned before must be understood. 10

Thus ends the Chapter on Assault.

Viramitrodaya

Having thus stated the penalty for an assault on the body of an individual, the Author mentions the same for an assault on other things. 15

Yājñavalkya Verses 223-29

For striking at & e. felling to the ground, a partition & e. of a wall or for piercing through it with a club etc., or for cutting it & e. splitting into two with a sword etc. or for rounding it with a stick etc.—the word *tathā*, 'similarly', goes with all the three. The meanings of all have been expressed by the words clubs etc. Five, ten and twenty *pasas* in order follow alternatively in the case of attack, for felling it down, however, *śatasyayam*, 'the expenses for it & e. the amount of money spent for the reconstruction of the wall. By the use of the word *tathā*, 'also', simultaneity is intended (223). 25

1 कुरन्तक (*Kurantaka*) *Ammanus Puncatorius* a species of *Amaranth* white or yellow in colour and having thorns

2 कर्तिर—(*Karatira*) *Nerium Odorum* a kind of tree with white red or yellow flowers, known in marathi as the *Kankāra* (कण्करी)

3 अतिमुक्त (*Atimukta*) a kind of creeper otherwise known as *Mādhara* (मार्धरी) (marathi शोभा or कसूरी शोभा) represented as twisting itself round the mango tree and as the beloved of that tree. Also the name of a tree *Dalbergia Euphantia* (दिविद्रा) *Apte*

4 सारुपि—This plant cannot be identified

5 गुलुही (*Gulūhi*)—Marathi गुलुह *Cocculus cordifolius*—a very useful plant generally growing on trees, it is a drug of considerable importance in the Indian medicine

Things which are likely to cause pain such as thorns etc., or which may cause deprivation of life, such as a snake etc. one throwing these in the house of another, shall be punished in the manner that the throwing causes injury. There the first i. e. the one who throws thorns
 5 etc., sixteen *panas*; the second i. e. one who throws a serpent etc. should be compelled to pay the middle amercement (224).

In the case of minor beasts such as the deer, the goat etc. for an attack which brings out blood and causes pain, or for cutting off the branches in the form of the horn etc., or for the injury to a limb such
 10 as a foot etc a series of punishments of which two *panas* is the first shall be inflicted. This is the meaning Here by mentioning the number two the increase in the *panas* is by two and two in respective order (225)

For cutting off the organ of minor beasts or for killing them, the
 15 middle amercement shall be the punishment. And he shall also pay the price to the owner. For causing injury to superior animals, double the amount of penalty stated in the case of minor beasts should be inflicted. By the use of the word *cha* 'and', here also the price should be paid. By the use of the word *eva*, 'only', is excluded the payment of the price
 20 in the case of the four such as the one who causes pain etc. (226).

In the case of trees which throw down branches having sprout, such as the *tata* tree and the like, and also trees which are the means of livelihood such as the mango and the like, for cutting off the branches or the entire trunk from its roots up and of its limbs the punish-
 25 ments shall be double commencing with twenty *panas* i. e. twenty. forty, eighty respectively in the case of the three By the use of the word *cha*, 'and', is included the fact that in the case of trees with roots going down being the source of livelihood and the rest etc., for cutting it off, double that shall be the punishment (227)

Chatya, 'a sacrificial place', i. e. a lovely place; boundary i. e. the limit of two villages and the like. On these i. e. on these holy and sacrificial places, on the places where there are temples of gods, for cutting off the branches of trees growing there, as also in the case of well known trees such as the *pippala* etc. double of that mentioned
 35 before i. e. of twenty *panas* etc. shall be the punishment. By the use of the word *cha* is added by inclusion the payment of expenses for restoration (228)

Gulmāḥ i.e. creepers not long nor thick such as *Māṭṭī* etc
Guchchāḥ h. not having the form of a creeper and not straight such as the
Kuraṇṭakā and the like *Kṣhupāḥ*, small trees with straight stems
 such as the *Karṇīra* plant and the like *Lalāḥ* creepers extending to
 great lengths such as the *śtimukhā* and the like These also growing
 thick without any knots or offshoots such as *śrīvā* etc *Oṣṭhāḥ*,
 herb which develop fruit such as the paddy plant etc Although cut
 they grow variously again and so called *virudhāḥ*, such as the *guduchi*
 and the like For the cutting off of the branches of these, half of what
 has been stated before, i.e. of twenty *panas* i.e. ten *panas* shall be the
 punishment Here also the payment for the expenses of the recoup-
 ment is also to be observed Manu "He who raises his hand or a
 "stick, shall have his hand cut off, he who in anger kicks with his
 "foot shall have his foot cut off (281) A low caste man who tries to
 "place himself on the same seat with a man of a high caste shall be
 "branded on his hip and be banished, or (the king) shall cause his
 "buttocks to be gashed (282) If out of arrogance he spits (on a
 "superior), the king shall cause both his lips to be cut off, if he urin-
 "es (on him), the penis, if he breaks wind (against him) the anus (283)
 "If he lays hold of the hair (the king) should lop off his hands
 "unhesitatingly, likewise (if he takes him) by the feet, the beard,
 "the neck, or the scrotum (284) This penalty is for a Śūdra in
 regard to a Brahman: Viṣṇu "One who causes pain without
 "blood thirty *panas*, with blood sixty *panas* For fear of proximity
 other punishments are not stated here (223-229)

Śūlapani

Yājñalkya Verse 229

Gulmāḥ such as the *māṭṭī* plant etc *Guchchāḥ* such as the *Kuraṇ-
 tāḥ* etc, *Kṣhupāḥ* such as the *Karṇīra* etc *Lalāḥ* i.e. creepers such as
 grapes etc *Prāṇāḥ* i.e. creepers without knots or offshoots such as the
śrīvā etc *Oṣṭhāḥ* i.e. herbs such as corn trees which develop fruit
Virudhāḥ i.e. creepers which even when cut grow with special strength such
 as the *guduchi* etc, for the cutting of the trunk etc of these half of the
 penalty stated before And the payment for their growth again

Thus ends the Chapter on Assaults

35

CHAPTER XX

Sâhasas or Heinous Offences

PAGES 135*

Now, intending to discuss the title of law called the *Sâhasa*, the Author first states its definition

5 Yājñavalkya, Verse 230 (1)

When common property is forcibly carried away, that is called a *Sâhasa*

Mitaksharâ — A deprivation of property which is *samânya*, common, i.e. which is held in common or, (also) having regard to its general characteristic of being incapable of appropriation at will, which is another's property is a *Sâhasa*. Whence? *prasabhabaranat*, on account of a forcible carrying away in short, on account of a deprivation by a show of force

This is what is (intended to be) said. By disregarding the Royal sanction, or the protest of the people whatever act of beating, or asaulting the wife of another and the like is committed in the presence of State Authorities or the ordinary people, all that is a *Sâhasa* this is the nature of a *Sâhasa*. Therefore even in the case of a deprivation of property which is common or which is another's, there is a *Sâhasa* on account of the same being done by means of a show of force

20 The characteristics of a *Sâhasa* have been described by Nârada¹ also. 'Whatever act is performed by force by persons inflamed with (the pride of) strength is called a *Sâhasa*, *sâhas* means force in 'this world'. The *Sâhasa* of this description, although it is closely allied to theft, abuse assault and seduction of women, still differs from these on account of the special element of show of excessive force and so has been specially mentioned with the object of (laying down) excessive punishments

Of that also after having laid down a threefold division into the lowest and the others and with a view to demonstrate the different punishments the characteristics have also been described by the same Sage². 'That again is declared to be threefold in the *Sâhasas* (*Sâhasa* of) the first middlemost, and the highest degree. The definition thereof has been given separately (3) Destroying reviling dishonouring or otherwise (injuring) fruits, roots, water and

"the like, or agricultural utensils, is declared to be a *Sāhasa*, of the
 "first degree (4) (Injuring) in the same way clothes, cattle, food,
 "drink, or household utensils, is declared to be a *Sāhasa* of the
 "middlemost degree (5) Taking human life by means of poison,
 "weapons, and the like indecent assault on another man's wife, and
 "whatever other (offences) encompassing life (may be imagined) is
 "called a *Sāhasa* of the highest degree (6) The punishment to be
 "inflicted for it must be proportionate to the heaviness of the crime,
 "(so however as) not to be less than a hundred (*Panas*) for a
 "*Sāhasa* of the first degree, whereas for a *Sāhasa* of the middle
 "most degree the punishment is declared by persons acquainted with
 "the *S'āstra* to be not less than five hundred (*panas*) (7) For a
 "*Sāhasa* of the highest degree, a fine amounting to no less than a
 "thousand *panas* is ordained (Moreover) corporal punishment
 "confiscation of the entire property, banishment from the town, and
 "branding, as well as amputation of that limb (with which the crime
 "had been committed) is declared to be the punishment for *Sāhasa* of
 "the highest degree (8) " Corporal punishment and the like punishment
 "in a *Sāhasa* of the highest degree should be administered cumulatively¹
 "or alternatively by a discriminating regard to the offence committed.

Among these, the Author mentions the penalty for a *Sāhasa* which is in the form of deprivation of another's property

Yājñavalkya, Verse 230 (2)

The fine is twice the amount of the value of it, but four-fold when (the offence is) denied

Mitāksharā — Of it, i.e. of the thing taken away, dwiguna twice the amount, mūlyāt of the value shall be danda, the fine He, however who having committed a *Sāhasa* *nibhute* denies saying 'I did not do,' for such a one, a fine is inflicted which is chaturguna four times the value of the thing

From this very rule where a special penalty is laid down it may² be inferred that the general rules of punishment laid down in connection with *Sāhasa* of the first degree and the like are applicable to cases other than (where there has been) the deprivation (of property).

1 दण्ड — Chastisement which may extend to Capital punishment

2 समस्तान्वेष्टाक

3 मय्ये ।

Viramitrodaya

“Whatever act is performed by force by a person inflated with
“(the pride of) strength is called *Sahasa*, *saha* means force in this
“ world Theft is a special variety of it The difference between
5 “ (*sahasa* and theft) is as follows, where the criminal act consists of a
“ forcible attack it is *sahasa*, where it is done by fraud it is theft
Thus characterized by Nārada,¹ the Author begins the title of law
called *Sahasa* which consists of a forcible injury in spite of the know-
ledge of the owner and which is distinguished from theft

Yājñavalkya, Verse 230

Samanya, ‘common’, i e, which is held as common property, in
short which is another’s property. Property of this character such as
gold etc Of that forcibly carrying away i e dropping with force in
the presence of the owner. Such a taking away by regard to the
15 literal meaning is *sahasa*, declared by the word *sahasa*, i e declared in
the Smritis There, of that i e of the property twice the value when it
is snatched away and four-fold when it is denied i e concealed (230).

Sūlapāni

Yājñavalkya Verse 230

20 Common property i e property of a low kind, such as grain etc, or of
the ownership of the many, of common property such as corn etc Of
common property also such as corn etc, deprivation in the presence of the
owner by force i e taking it away by compulsion constitutes a title of
law known as heinous offences When, however anything is done in the
25 absence of the owner or is denied after committal that is known as theft
As says Manu ² ‘ It will be an offence of robbery when it is committed
“ in the presence (of the owner) and with violence, if (it is committed) in
his absence it becomes theft, as also if it is denied after it has been
“ taken ‘ In the presence’ i e, in the presence of the owner, in the absence,
30 it becomes theft, ‘denies i e conceals

Nārada³ having stated five kinds of Sahasas such as the homicide
etc has also stated an act done with violence to be *Sahasa* thus ‘ Man-
“ slaughter, robbery, an indecent assault on another man’s wife and the
“ two species of assault, these are the five kinds of heinous offences
35 ‘ That again is of three kinds etc (see Nārada ch xiv 3-8, see above Mitāk-
sharā’p 1276 l 3 to p 1277 l 18) Whatever act is performed by force by
persons inflated with (the arrogance of) strength is called *Sāhasa*
(a heinous offence), *sa/* i e or force means strength in this world (230)

1 Ch XIV 1 and 12

2 Ch VIII 313

3 Ch XIV 2-8

The Author mentions a rule regarding one causing a *Sāhasa* (to be committed)

Yājñavalkya, Verse 231

He who causes the commission of a *Sāhasa*, shall be made to pay a double fine; and he who causes it by declaring "I shall pay" shall be made to pay four-fold. 5

Mitākṣharā:—Yah, he, however, who says (to another), "Commit *Sāhasa*", and (thus) *kārayati*, causes a *Sāhasa* to be committed, *dwiguṇam dāṇḍam dāpyah*, shall be made to pay twice the amount of penalty, imposed upon the actor himself. He, moreover, who says 'I shall pay you money', and thus causes a *Sāhasa* to be committed, such a one shall be compelled to pay *chaturguṇam*, a four fold fine, on account of the aggravation of the offence. 10

Vīramitrodaya

The punishment for one who causes a *Sāhasa* is like the one who perpetrates it (himself) So the Author says 15

Yājñavalkya, Verse 231

He who causes a *sāhasa* to be perpetrated by an order "do the *sāhasa*;" such a one shall be compelled to pay a penalty twice that for the perpetration of the *sāhasa*. "On a possibility occurring of a penalty being inflicted upon you, I shall pay the amount", he who saying thus causes a *sāhasa* shall be compelled to pay four times that for the perpetration of *sāhasa* (231). 20

Śūlapāṇi

Yājñavalkya, Verse 231

He etc He who causes by his words viz. 'commit an offence', such a one should be compelled to pay a penalty twice of that for the offence He, moreover, who causes it to be done with the words "I shall give you money, you do", shall be compelled to pay four times on account of the aggravated form (of the offence) (231) 25

The Author mentions a special rule regarding a particular offence for abusing the venerable, etc 30

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The Author mentions rules regarding particular *Sāhasikas*

Yājñavalkya, Verses 232 & 233.

He who abuses or disobeys the venerable, who beats his brother's wife, who does not give what is promised, who breaks open a house (which is sealed (232); 35

Or who does an injury to his neighbour, or blood relations and the like, for all such offenders fifty *panas* is the fine; this is the invariable rule.

Mitākṣharā :—Of the venerable, arghasya, i.e. those who deserve to be respected, e.g. the teacher &c, he who offers an abuse or transgresses their commands, as also he who beats his brother's wife; similarly one who does not pay an amount which was promised, i.e. agreed upon, he, also, who breaks open a house which is sealed; also, he who does an injury to the owners of houses or fields adjoining his own house or field, or to blood relations i.e. those born in his own family—and by the use of the term *ādī*, 'Also', (he who causes injury) to the inhabitants of his own village or country—all these shall be punishable with a fine of fifty *panas*.

Vīramitrodaya

The Author mentions particular punishments for particular *sāhasas*
Yājñavalkya, Verses 232-33

One who levels an abuse or transgresses the commands of the venerable people such as the preceptor etc; he also who gives a beating to the brother's wife; likewise one who does not deliver something such as gold etc, which has been accepted for delivery from another; he who breaks open a house which is sealed with a signet (232);

One who does an injury to any one of these, i.e. the inhabitants of his own or of the neighbouring village, gentiles i.e. persons born in his own family, and by the use of the word *ādī*, 'et cetera' *sreni* and others also; for these stated before, the penalty is measured by fifty *panas*. Thus has been definitely declared the punishment in the *Dharmasūtra*. By the use of the word *cha*, 'and', is included one who does not indulge in a speech (233)

Sūlapāni

Yājñavalkya, Verse 232

He who abuses and also disobeys the respectable, such as the preceptor etc, as also one who beats his brother's wife, similarly he who does not give what is promised, and also one who breaks open a house which is sealed, also one who does an injury to the owners of the fields or houses adjoining his own house or field, as also his relatives i.e. persons born in his family—by the use of the word *ādī* 'and the like', as also persons of his village or country—such a one should be punished with fifty *panas* (233)

Of the *Samanta* such as a betelnutseller and the like as alone are authorized by an association. By the use of the word *Ādi* for one causing injury to *Sreni* and the like also, a fine of fifty *panas* should be imposed (233)

Yājñavalkya Verses 234–237

He who wantonly consorts with a widow, who does not run (in response) to a call (for help), who causelessly raises a cry (for help), he who, being a Chandala touches men of the higher classes (234).

Who feeds Sûdra ascetics on (the occasions of) religious or obsequial ceremonies, who pronounces an improper oath who being unqualified does an act which can be performed by those (only) who are qualified (235),

As also he who destroys the virility of a bull or inferior beasts who conceals common property who destroys the foetus of a female slave (236)

Or whoever being the father, the son the sister and a brother, the husband and the wife the preceptor and the pupil, abandons each the other when (that other is) not degraded shall be fined a hundred *panas* (237)

Mitaksharā —Moreover, he who without a *Niyoga* or a proper appointment has connection with a widow (merely) by self will, or who upon a cry for help being raised by persons frightened by thieves and like others, does not run for help even when he is able, as also he who causelessly raises a cry (for help), he, who being a Chāndāla touches a Brāhmaṇa or others, also he, who, feeds Śūdra ascetics such as the Digambaris and others at religious or exequal ceremonies, he, also who pronounces an improper oath, *eg* I shall take my mother &c, similarly, one who being unqualified *eg* a Śūdra and the like does an act *eg* study &c which can be done only by one qualified. A bull means a strong bull, 'minor beasts' such as a goat &c one who destroys the virility : *ie* the procreative power of these. In the case of the reeling (one who destroys the virility) 'of trees and minor beasts &c —(it should be interpreted thus,)—one who causes the destruction of the fruits or budding blossoms of trees etc, by means of sprinkling asafetida or other drugs, he who conceals common property, : *ie* who causes a deception in regard to property which is common, as also one causing the abortion of a female slave as also those who being related as their father etc abandon each the other without being degraded. All these severally deserve to be fined one hundred *panas* each.

Vīramitrodaya

With a view to treat of adultery with women as distinguished from *sāhasa* and although differentiated from *sāhasa* there being comparison between the two, the Author while stating the penalty for that, mentions the penalty for others also with a view to brevity of the composition

Yājñavalkya Verses 234-37

Swachchhikandana, 'wantonly', i. e. *steechchhayā*, i. e. 'according to his impulse, having intercourse with a widow, when a cry is raised by those frightened by robbers and others, one who though competent does not run up for preventing it, one who causelessly raises a hue and cry, one being a *Chandāla* touching Brāhmanas or the like, one who feeds the Sudras or the ascetics such as the nude ones and the like at rituals in honour of the gods or of the manes, one who indulges in an improper oath such as "I shall approach the mother if this is false and the like, similarly one unfit such as the *sudra* and the like performing the acts of those who are qualified such as the Brāhmana and others studying the vedas, one who destroys the virility i. e. procreative capacity of bulls or lower beasts, one concealing common property which is undivided, one who destroys the embryo of a female slave, and any one of the following two abandoning the other viz father and son, sister and brother, husband and wife, preceptor and the pupil when the other has not been degraded, such a one — i. e. all these, become liable for a penalty of one hundred panas. The use of the first *śloka* is inclusive of one who raises up a cry even for a reason, by the second use, of one who has fallen, by the third, of the heretics, by the fourth, of a ritual in honour of men, by the fifth, of a bull, by the sixth, of the mother and the son renouncing each other, of the father and son by one alone, for the abandonment of the other Sankha says "He who lustfully abandons those not degraded shall incur the penalty of a hundred. This moreover, is, when the abandonment is by the unlearned, for an abandonment by the learned, however, says Manu' "Neither the mother, nor the father nor wife nor the son should be cast off, one casting them off when they are not guilty of degradation shall be fined by the king six hundred. When the learned cast off each other, a penalty of three hundred should be understood (234-37)

Sulapani

Yājñavalkya Verse 234

He who has an intercourse with a widow without an appointment, one who does not run up (for help) when loudly invoked by those oppressed with the fear of robbery as also one who causelessly raises up a cry, one who being a *clant* touches the Brahmana and the others 5

Yājñavalkya Verse 235

He also who causes the ascetics such as the *digamī* aras etc to be fed at rituals in honour of the Gods and the manes he also who utters an improper oath e g I shall have recourse to mother and he also who being himself unfit such as a Sūdra etc does acts for which he is not fit such as imparting education etc (235) 10

Yājñavalkya Verse 236

*Vṛśak*¹ a bull : e a fatbull other animals such as goat etc one who destroys the virility : e the procreative capacity of these For the rearing trees lower animals etc one who by the use of medicaments such as *vesphoetida* etc causes the fruits and the flowers of trees to fall one who causes deception regarding common property one who causes abortion to a female slave (236) 15

Yājñavalkya Verse 237

Those also such as the father and the like although not degraded abandon each other all these shall be liable to pay a penalty of a hundred *panas* (237) 20

On the occasion of discussing *Sūtras* the Author mentions a penalty for similar offences by the washermen and like others 25

Yājñavalkya Verse 238

A washerman wearing the garments of another shall be fined three *panas*, and in cases of a sale, hiring out pledge, or a loan on request ten *panas*

PAOF 137*

Mutakṣarā —*Nejakah* a washerman is one who cleans clothes (by washing), such a one if he himself puts on clothes made over to him for being washed then should be fined three *panas* He moreover who sells them, or hires out e g (with an agreement such as) This 'cloth is being given to you for such a period so much money should be given to me, and who thus lets out on hire or makes a pledge of it, or gives it to his relatives and friends upon request, such a one shall be fined ten *panas* for each offence Thee clothes moreover, must be washed 35

1 वृ-वृषि-—a sc on bull

on a smooth plank of the silk cotton tree (*S'almāli*), not on a stone, and they should not be exchanged,¹ nor should they be allowed to be worn in his own home otherwise he shall be punished, *vide* the text of Manu²

5 "A washerman shall wash gently on a smooth board of the silk cotton wood, he shall not return the clothes (of one person) for the clothes (of another), nor allow anybody (but the owner) to wear them"

When, moreover, he destroys them through a mistake, then the rule stated by Nārada³ should be observed. "An eighth part of its value is the depreciation for a wearing apparel washed for the first time, a fourth, when (it is washed) twice, a third, (when washed) three times, and a half (when it is washed) four times (8). After the depreciation of a half (of the value), a quarter shall be (considered as) reduced thenceforth till the fringe is tattered, and the cloth becomes worn. In the case of a tattered cloth there is no rule regard-
15 "ing the reduction of its value"

Thus for a cloth which was purchased for eight *panas* and washed only once, and which is lost, the price to be paid should be the (quantity of) *panas* minus an eighth part—i. e. one *pana* (of the cost price), for a twice-washed cloth, however, less by a quarter, and for a thrice washed cloth, less by a third part, for a cloth washed four times a half (of the price); *i. e.* four *panas* should be given. Thereafter, the remaining fraction of the price lessened by a quarter for each wash should be given, until it becomes tattered. Of a tattered cloth, moreover, which is destroyed, the price should be determined at the option

Vīramitrodaya

Now on the occasion of discussing *Sūtras* the Author mentions penalties for offences similar to these by means of thirteen verses

Yājñavalkya Verse 238

30 *Nejakah*, 'a washerman', *i. e.* one who washes clothes. In the reading *rajaka* also, the same is the meaning. When putting on the silken cloth of another given to him for washing, he shall be made to pay the penalty of three *panas*.

35 He, however, who either sells or hires out for use with an agreement for the hire, or who pledges it for a fixed period, or who offers to his relatives for ornamentation on request clothes made over to him for washing, such a one shall be made to pay ten *panas* (238).

1 अग्रत means inversion, perversion, Balambhatta

2 Ch VIII 396

3 Ch IX 8-9

Śūlapāṇi

On the occasion of treating the Suhāsas the Author mentions a penalty for the washermen and the like in regard to offences of a like nature

Yājñavalkya, Verse 238

A washerman, i.e. one who cleans the clothes, such a one if he himself puts on clothes which have been made over to him for washing, then he should be fined three *panas*. One, moreover, who sells these or pledges on an agreement that "this is being given to you for use for a particular period, you should give me so much money", in this way one who pledges it or creates a charge on it, or one who gives it over to his relatives on a request, such a one should be punished with ten *panas* for each offence

These clothes, moreover, should be washed on a smooth plank of the silk cotton tree and not on a stone. As Manu¹ has observed "Nor shall he return the clothes (of one person) for the clothes (of another), nor allow anybody to wear them" (238)

Yājñavalkya, Verse 239

For witnesses in a dispute between a father and a son the fine is three *panas*. Also for him who engages himself therein, for such a one also, the fine is eight fold

Mitāksharâ — In a dispute between a father and a son, he who undertakes to be a witness, and does not ward off the dispute, such a one shall be fined three *panas*. He, moreover, who in a dispute with a wager between them, becomes a surety—and by the use of the term *cha*, 'also', he who fans the dispute between them, even he,—shall be fined an amount eight times three *panas*, i.e. twenty four *panas*. In the case of (a dispute between) a husband and a wife, or like others, this same (rule as to the) fine must be followed

Viramitrodaya

Yājñavalkya, Verse 239

In a quarrel between the father and the son, one who undertakes to be a witness and does not ward off the quarrel, for him the penalty is measured by three *panas*. He, moreover, who intermeddles in their dispute and aggravates the quarrel, for him — by the use of the word *api*, 'even', in such a dispute for the surety — a fine of eight *panas* should be administered (239)

Śūlapāṇi

Yājñavalkya, Verse 239

For witnesses in a dispute between a father and son the penalty is three *panas*. For one who intermeddles, the penalty is eight *panas* (239)

Yājñavalkya, Verse 240

He who falsifies scales royal mandates measures, and also standard coins, and also he who uses these, shall (both) be forced to pay the highest amercement

- 5 Mitāksharā — *Tulā* scales, i.e. the weightment rod *Sāsana*, a Royal mandate, has been described¹ before *Māna* a measure, such as a *prastha*,² a *drona*, and the like *Nanakam*, a standard coin i.e. (money) stamped with (the royal) mark or the like, such as a *dramma*,³ a *nishka*, or the like

- 10 In the case of these, he who *kūlakrī* falsifies them i.e. who makes them different from the general standard of the country, whether less or more, or stamps (money such as) *dramma* and the like in an unusual manner, or alloys it with copper or other (base metal) and he also who uses them knowing them to be false, both of these shall each be fined in the highest amercement

Viramitrodaya

Yājñavalkya, Verse 240

Tulā, 'scale' i.e. the weighing rod, *sāsana*¹, 'the royal command', has been mentioned before, *māna*, 'measure', such as *prastha*² etc, *nanakam*, 'coin', marked with signets such as the *nishka*, *dramma* etc

- 20 Of these one who manufactures a counterfeit and fraudulently causes delusion in another, and one who even though knowing, enters into transactions with these counterfeiters, such a one should be compelled to pay the highest amercement By the use of the first *cha* is included one who causes the counterfeit, and by the second *cha*, one who
25 deals with a counterfeit (240)

Śūlaspāni

Yājñavalkya Verse 240

One who manufactures false scales and with these who knowingly makes sales and purchases coin such as *rupaka* etc (240)

1 i.e. in the Acharadhyaya Verses 318, 319, 320 page 580 Mr. Colebrooke gives—'Market rates—(literally, Commands) the king's written precepts regulating market rates'

2 *Prastha Drona*—kinds of measures. A *Prastha* is a measure having thirty two *palas* whilst a *Drona* is either the same as an *Ādhaka*, or equal to $\frac{1}{4}$ *Ādhakas* or $\frac{1}{8}$ th of a *Āhara* or 32 or 64 *shas*.

3 *Dramma* (Colebrooke reads *dharmas*)—a *dharmas* (i.e. of the Greek *drachm*) *Nishka*—A golden coin of different values but generally taken to be equal to one *Karsha* or *Santarua* of 16 *māṣas* or also a weight of gold equal to 108 or 150 *muṣaras*.

The Author propounds a rule regarding the examiner¹ of coins
Yājñavalkya, Verse 241

He who declares good money bad, as also he who declares bad money good, that examiner of coins shall indeed be compelled to pay the highest amercement

Mitākṣharā — That examiner of coins, moreover who declares a *dramma* or other coin good even when it is alloyed² with copper or the like, or declares a good coin to be false, such a one shall be fined in the highest amercement

Vīramitrodaya

Yājñavalkya, Verse 241

That examiner of coins who declares a faultless (coin) to be counterfeit, and a counterfeit coin to be faultless, shall be made to pay the highest amercement. By the use of the word *cha* is included one who although knowing it to be counterfeit says "I do not know" (241)

Sūtapām

Yājñavalkya, Verse 241

The examiner of coins : i.e. one who tests the marks. The rest is clear

The Sage mentions a rule regarding a physician

Yājñavalkya, Verse 242

A physician falsely posing himself as such shall be fined in the first amercement in the case of lower animals, in the middlemost, in the case of men; and in the highest amercement, in the case of royal persons

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Mitākṣharā — Bhṛṣhak a physician moreover, who, māhyā, falsely, : i.e. even when he is ignorant of the science of medicine, yet for the purpose of making out a livelihood, poses himself as a duly qualified physician, and treats medically lower animals men or royal persons, such a one shall be fined in the first, middlemost, and the highest amercements respectively

There also the amount of the fine whether it should be small or great, must be determined in the cases of lower animals &c. by regard to the value (of the particular beast) or the *varṇa* (of the man), or the close relationship to royalty

1 Colebrooke reads as if the introductory remark of Viṣṇanesvara referred to the coins and not to the person testing them

2 i.e. which is over alloyed &c

Vīramitrodaya

Yājñavalkya, Verse 242'

- An apothecary falsely posing as one dealing with diseased animals *i. e.* animals such as the cow and the like, and giving them treatment, the first amercement, and posing himself falsely with reference to men not connected with royalty, the middle amercement; and the apothecary *i. e.* the physician posing falsely with royal personages shall be made to pay the highest amercement (242).

Śūlapāṇi

- 10 Yājñavalkya, Verse 242

"Lower animals" such as the cow etc. and in regard to ordinary, such as man, the middle (amercement) (242)

Yājñavalkya, Verse 243

- 15 He, moreover, who restrains one who ought not to be restrained, or releases one who is restrained before the decision (in his case) is arrived at, such a one shall be fined in the highest amercement.

- Mitākṣharā:—He, moreover, who restrains without the king's command one who does not deserve to be restrained and who is innocent; as also he who releases one who was restrained being summoned in connection with a trial at law, even before yet the trial was concluded, shall be compelled to pay the highest amercement.

Vīramitrodaya

Yājñavalkya, Verse 243

- 25 One who restrains one who does not deserve to be restrained, and who being in authority discharges *i. e.* does not restrain one who deserves to be restrained, as also one who being authorised lets off one who has been summoned for a judicial trial when the trial has not been decided, shall be compelled to pay as penalty the highest amercement. By the use of *cha* several times is included one who beats one who should not be beaten, as also one who releases one who has been imprisoned (243).

Śūlapāṇi

Yājñavalkya, Verse 243

- 35 Having summoned one in whose case a decision has not been given, for the giving of a decision (243).

Yājñavalkya, Verse 244

He who abstracts one-eighth share by a (false) measure or balance, such a one shall be compelled to pay a fine of two hundred *panas* and (proportionately) determined (according) as the loss is greater or less

Mitāksharā — That grocer, moreover, who from paddy, cotton or any other vendible commodity abstracts an eighth part by (using) a false measure, or a false balance, or by any other means, such a one shall be fined two hundred *panas*. The smallness or greatness of the fine must be¹ determined by regard to the greater or less quality of the portion abstracted

Viramitrodaya

Yājñavalkya, Verse 244

That grocer who in the case of vendible articles like the paddy, cotton etc. by a counterfeit measure or by a counterfeit balance deprives people of an eighth part, such a one should be made to pay the penalty of two hundred *panas*. In the case of more or less of the eighth part taken away, the penalty should be determined according to the less or greater loss caused. By the word *api*, 'even', is included the deception in counting and the like, by the use of the word *cha* is included the greater or less portion of the part taken off (244)

Śūlapāni

Yājñavalkya, Verse 244

Manena : *e* by measure such as a *prastha* etc. for an increase or a decrease and of the same when an eighth has been increased or decreased shall be compelled to pay a penalty as may be determined after investigation (244)

Yājñavalkya, Verse 245

He who adulterates with articles of inferior quality, medicines, oil, salt, perfumes grain, sugar and the like which are kept for sale, shall indeed be compelled to pay sixteen *panas*

Mitāksharā — Bheshajam, a medicine, : *e*, medicinal drug, snehah, oil, such as clarified butter and the like, 'articles of perfumery,' such as *usra*² and the like. The term *ādī* 'and the like' comprehends aśafatida, pepper and the like. In the case of these the fine for mixing inferior substances with these for the purpose of sale, is sixteen *panas*

1 So that if the fraud be less than an eighth portion, the fine shall be less than two hundred *panas*, and greater if the fraud exceed the eighth portion.

2 Known as *lilus* or *śafā* (शफा in Marathi) — the root of the (शफ) *Virena* grass — *Astragalus muricatus*

Vīramitrodaya

Yājñavalkya, Verse 245

- 5 *Bhaṅghajyam*, 'medicament, i.e. medicinal articles, *snehah*, 'oil things, such as ghee etc, *latanam*, 'salt, such as the rock-salt, *gandhah*, 'perfume, such as *usira* etc. the corn and jagri are well known, the meaning of the word *ādī* (indicates) *asaphotida*, *marich*, pepper etc. In these articles of sale one mixing an article of inferior quality for the purpose of sale shall be compelled to pay sixteen *panas*. By the use of the word *tu*, 'however, is excluded the penalty of two hundred or the
- 10 like stated before (245)

Sūlapāni

Yājñavalkya, Verse 245

One effecting a sale after mixing an article of inferior quality shall be punished sixteen *panas* (245)

Yājñavalkya, Verse 246

- 15 When earth hide gem, yarn iron, wood, bark, or cloth, which is not of good quality, is made (to appear as) of good quality, the fine is eight times the amount of the sale
- 20 *Mitākṣharā* —Moreover, when a superior quality does not exist in articles such as hide &c. it is regarded as being *ajāti*, not of good quality, for giving such a thing the appearance of (a substance of) good quality, *jātikarane* i.e. for the purposes of the sale, making it resemble a thing of a valuable kind, by the addition of (a different) odour, colour or juice, as for instance counterfeiting fragrant
- 25 *Āmalakā*¹ by adding the odour of the *Mallikā*² flower to (a piece of) earth, or the tiger-skin by adding vivid colours to a cat skin, or a ruby by tinging a *sphatikā* bead with another hue, or a silken thread, by giving a glossy appearance to a cotton thread, or silver, by bringing on a bright colour by polishing black metal, or sandal
- 30 wood by adding the odour of sandal to a piece of *Bela*³ wood, or passing the bark of *Kankola*⁴ for that of a clove, or counterfeiting a silken cloth by creating a glossy appearance on a cotton cloth, (in such

1 Known in Marathi as अमळ (Āmla) *Nyctanthes arundata*

2 *Mallikā* is a kind of jasmine *Phyllanthus emblica*

3 Known as the *Bela* (बेल) tree *Aegle Marmelos* or wood apple

4 *Kankola* is the name of a plant bearing a berry, which also is known as

cases) the fine must be understood to be eight fold of the commodity (offered) for sale viz the earth, leather and the like, which is made to resemble (another commodity). _____

Vīramitrodaya

Yājñavalkya, Verse 246

In the case of earth etc. as articles for sale and not of the required quality : *i* when it is not of the quality which will induce the higher price, one by bringing on a bright colour etc with a view to make it appear of the quality which will induce a higher price, should be fined eight times the price of the best article of the kind (246).

Sūlapāni

Yājñavalkya, Verse 246

Of these which are of a lower value, one who through covetousness counterfeits into one of good quality shall be fined eight times the amount of the price received, as for example, mixing earth with the fragrance of the *mālikā* flower and selling it as fragrant *āmalaka*, and such other acts may be inferred

Yājñavalkya, Verses 247-248

He who pledges or sells a sealed casket or a valuable vessel which is artificially prepared, shall be fined thus (247)

For (a thing the value of which is) the fraction of a *pana*, fifty (*panas*), and for a *pana* a hundred ; for two *panas*, two hundred , and when the value is higher, (the fine is) higher

PAGE 139*

Mitāksharā — Seal means a cover. That which has the cover of a seal is a sealed casket *samudram Parivartanam artificial preparation, i. e.* transformation He who exhibits one casket (*i. e.* one) containing pearls, and changes it by a sleight of hands for another casket filled up but containing *Sphatikās* (or glass stones), as also he who counterfeits a valuable commodity such as the musk and the like, and either sells it or deposits it as a pledge the determination of fine for such a one should be understood as follows If the actual price of the counterfeited musk or other article is the fraction of a *pana*, *pane bhṃae, i. e.* less : *i* if its value is less than a *pana*, the fine for a sale in which the counterfeited article was sold shall be fifty *panas* In the case where, however, the price is a *pana*, the fine shall be a hundred, and in the case of an article of the value of two *panas* two hundred ; and in this manner the amount of the fine should be increased according as the price is (determined to be) higher.

Vīramitrodaya

Yājñavalkya, Verses 247-248

- 3 *Mudrām*, 'seal', i. e. the cover, of that having been exhibited for sale etc., at the time of the sale with that a cover with a seal full of pearls, one who changes it by a sleight of the hand etc. for a pot full of bright pebbles etc., etc. (247-48).

Śūlapāṇi

Yājñavalkya, Verse 248

- 10 For one who misappropriates a valuable vessel or a sealed casket, or artificially prepares saffron etc. and who sells it, the determination of the fine should be made. How should it be made? So the Author says when it is less by a *pana* the penalty shall be fifty *panas*; when it is a full *pana* (the penalty is) hundred *panas*. For two *panas*, two hundred For a value exceeding this, the penalty should be made according to the excess.

15 Yājñavalkya, Verse 249

For (traders) combining to maintain a price to the prejudice of labourers and artisans, although knowing the rise or fall of the prices, the fine shall be the highest amercement.

- 20 *Mitākṣharā*:—Although knowing the increase or decrease in the market rates as regulated by the king, if traders combine, i. e. join together, and out of greed for profit, maintain another price, which is detrimental to the labourers, *kārūṇam*, such as the washermen and others, or *śilpinām*, the artisans such as painters or sculptors and the like, they shall be fined one thousand *panas*.

Śūlapāṇi

Yājñavalkya, Verse 249

- 25 For grocers fixing a price for the corns etc. without the consent of the king and in a manner which would be oppressive, as also for the artisans and manufacturers for effecting an increase or decrease in the price declared by the king, the penalty should be one thousand *panas*. Manufacturer, such as the weaver; *Śilpi*, 'artisan', i. e. sculptor (249).

Yājñavalkya, Verse 250

For traders combining to obstruct (the sale of) a commodity by (demanding) a wrong price, or for selling it, the fine laid down is the highest amercement.

Mitākṣharâ:—Moreover, those traders who combining together, obstruct (the sale of) a commodity arrived from a foreign country, by demanding it at a wrong price, *anargheṇa*, i. e. at a lower value, or sell it at a higher price, the highest amercement or fine for these has been laid down by Manu and others¹.

Vîramitrodaya

Yājñavalkya, Verses 249, 250

Of those who fix an inconvenient price i. e. the rate for corns etc. and of the traders who bring about the depreciation or increase of the price fixed by the king, the penalty for these has been stated by the sages to be measured by a thousand *panas*. So also for those traders obstructing the sale of a valuable commodity by (setting up) a small price, and those who purchase by deceit etc. or those who sell a commodity of small value for a high price, the penalty laid down is the highest amercement (249, 250).

At what price, then, must a commodity be sold? so the Author says

Yājñavalkya, Verse 251

The sale or purchase should be (conducted) at that price which is fixed by the king; the surplus made therefrom is understood to be the legal profit of traders.

Mitākṣharâ:—Rājani, by the king, when he is near *sthâpyate yorghah*, whatever price is determined, i. e. is regulated by him, by such a rate the sale and purchase must be made every day. That surplus which has been derived from it is *nissravah*, the surplus made, i. e. the special balance i. e. the surplus over the rate as regulated by the king is the only legal profit of the traders and not the one made from rates determined by their own fancy. A special rule, has, moreover, been indicated by Manu² in the matter of regulating prices: "Once in (every) five nights, or at the close of each fortnight or month, the king shall settle the prices in the presence of these (i. e. the traders)."

1. The meaning which results therefrom is, that a fine is directed for the offence of raising or lowering the market rate fixed by the king. The sage declares that purchase and sale should be conducted 'according to the prices regulated by the Sovereign' (Colclough).

2. Ch. VIII. 462, Some editions of Manu read *रात्रि पञ्चम्यां रात्रौ*—

Viramitrodaya

Yājñavalkya, Verse 251

- Now with the avoidance of these penalties how can they have their subsistence? So the Author proceeds "by the king etc. That price which has been fixed by the tradesmen in the presence of the king with his sanction, with that price should the sale and purchase be made by the merchants every day. Therefore the residue which would remain from the purchase and sale, i. e. the excess part, that alone, should be the source for the subsistence of the tradesmen dealing in profits. Here Manu¹ states a special rule. "Once every five nights, "or at the close of each fortnight or a month, the king should fix the "prices in the presence of these, i. e. the traders (251)

Śūlapāṇi

Yājñavalkya Verses 250-251

- 15 Whatever price is fixed by the king with that alone should the sale and purchase be effected. Whatever is realised by the sale of the articles of merchandise in excess of the original amount has been declared as the small profit for the traders

Yājñavalkya, Verse 252

- 20 On commodities of one's own country a trader shall take five per hundred and ten on those from foreign countries when he buys and sells again immediately

- Mitaksharā — Moreover he who purchases a commodity obtained in his own country and sells it such a one shall take a profit of five per cent i. e. five in one hundred *panas*. On a commodity however, obtained from a foreign country he should take as his profit, ten *panas* on an original cost of one hundred *panas* (on) a commodity the sale of which is brought about immediately on the day of purchase

- 30 But he again who sells at a subsequent time for such a one, a greater profit shall be allowed as a longer time elapses. And thus the market prices of commodities of his own country should be so regulated by the king that there may be a profit of five *panas* in a hundred *panas* on the regulated price

Śūlapāṇi

35

Yājñavalkya Verse 252

For an article of merchandise in one's own country the trader should recover five per cent as profit while for an article imported from another country, ten per cent provided the sale and purchase occur immediately. In the case of delay, there is no rule (252)

PAGE 140*

The Author mentions the principle for determining the price of a foreign commodity

Yājñavalkya, Verse 253

Adding the incidental charges to the cost of the commodity, let the price be fixed which shall be equitable both to the buyer and the seller

5

Mītākṣharā — On a commodity arriving from another country, after calculating the charges which are incurred for carrying it from and back to the foreign¹ country, as also the customs and other dues and adding these to the original cost of the commodity, the price should be determined by the king² which will be equitable both to the buyer and the seller, so that a profit of ten per cent may be made

10

Vīramitrodaya

Of what kind, from what commodity is this residue? So the Author says "In one's country etc

Yājñavalkya Verses 252-53

15

If after purchasing in one's own country only it is sold, there, for a commodity of the value of hundred *panas*, five *panas*, but for having purchased in another country and brought in one's own country if a commodity is sold, there the trader shall take ten *panas* as the profit if he sells the commodity not after a long interval after its purchase. By reason of its being in a distant country when there is long delay for a sale having added the expenses for the importation, preservation etc of the commodity, and thus adding to the original cost on a hundred of that by regard to the difference due to the native and foreign country, the king should fix a price which should be fifteen per cent in excess and which should benefit the seller and the purchaser. By the use of the word *cha* are added the citizens also by the use of the word *eva*, 'only', is excluded (the possibility of) neglect by the king in the matter of fixing the price. Here other penalties in regard to other subject matters are not stated for fear of adding to the bulk of the book.

20

25

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Thus ends the Chapter on *Sahasas*

Sūlapāṇi

Yājñavalkya Verse 253

For an article of merchandise which has been received from a mountainous and distant country whatever has been incurred as expenditure etc the price of that should be determined by thousand folding the same in such a manner that it may not be detrimental to the vendor or the purchaser (253)

35

1 In this instance another or a foreign country should not be assumed by a difference in language or the intervention of mountains or rivers but by the actual distance by *legends*

2 Cf. Manu Ch VIII 401 where a general rule has been laid down,

CHAPTER XXI

Non-delivery after Sale

Having finished a topic which incidentally arose, the Author now introduces the chapter on Non-delivery after Sale. Its characteristics, moreover, have been stated by Nārada¹: "When a commodity has

- 5 "been sold for a price and is not delivered to the purchaser, it is termed "Non-delivery of a sold chattel—a Title of Law." There, after mentioning the two-fold division of vendible things according as they are movable or immovable, its six-fold character has been demonstrated by the same
- 10 Author²: "In this world vendible property is of two kinds, movable and "immovable (2). The rule regarding delivery and³ non-delivery of "merchandise is declared six-fold by the learned viz. (What is sold)
- 15 "by tale, by weight, by measure, according to work, according to its "beauty, and according to its splendour (3)." 'By tale' as the betel-nut or the like. 'By weight' such as gold, musk, saffron and the like.
- 20 'By measure' such as rice or the like. 'According to work' such as a horse, buffalo and the like as determined by the burden carried or the milk yielded by them. 'According to its beauty' such as a prostitute &c. 'According to its splendour' i. e. according to their

The Author mentions a fine for one who having sold a merchandise of (any of) these six kinds, does not deliver it

Yājñavalkya, Verse 254

- 25 He who, having received the price of a thing sold, does not, however, deliver it to the buyer, shall be compelled to deliver it together with interest; or with the foreign profit, to one who has come from a foreign country.

- Mitākṣharā:—That merchandise of which the price has been received by the seller is *grhitamūlyam* onc, *the price of which was received*, if the seller does not deliver such a thing on demand to a local purchaser, and if that merchandise bore a higher price at the time of the
- 30 sale, but is obtainable at a low price at another time, then the seller shall be compelled to pay to the buyer the article together with the excess in value of the commodity—whether movable or immovable—over the one to which it is reduced. When there is no difference in

1. Ch. VIII. 1.

2. Ch. VIII. 2-3.

3. *Dāna* is delivery and *Ādāna* is non-delivery, Dr. Jolly translates it as gift and receipt, and so does Colebrooke III. 3, 3.

the price of the commodity and its original price, but the commodity retains the same price at which it was agreed to be sold at the time of the (contract of) sale, the seller shall be compelled to make over to the buyer the merchandise itself together with the profit which a seller may have made *e. g.* two, three, or the like 5 per hundred as already discussed, or otherwise according to the option of the seller. As says Nārada¹: "If there has been a fall in the market value of the article in question, the purchaser shall receive both the article itself together with the difference in value. "This law applies to those who are inhabitants of the same place; 10 "but to those who travel abroad, the profit arising from (trading "in) foreign countries shall be made over (as well)."

When, however, on account of a rise in the price of the commodity, there is a diminution in (the value of) the thing, then the seller must be compelled to deliver over the thing itself together with the 15 charges for enjoyment of the thing itself such as in the case of cloth, for wearing it, and in the case of a house, for comfortably dwelling in it, and the like. As says Nārada²: "If a man sells property for a certain price, and does not hand it over to the purchaser, he shall have to "pay its produce, if it is immovable, or the profits arising from it, 20 "if it is movable property."

Possession by the seller is declared a decrease, as the thing loses in value from the point of view of the buyer. The decrease (here comprehended) is not any destruction of property such as the demolition of a wall, or the like; since that has already been mentioned in³: 25 "If the article should have been injured, or destroyed by fire, or "carried off, the loss shall be (charged) to the seller alone, as he did "not deliver (it) after it had been sold (by him)."

When, however, such a purchaser has come from a foreign country for taking away the merchandise, then, 30
PAGE 141 * the seller must be compelled to deliver over the thing to the buyer together with such profit as might have been made by one taking the merchandise and selling it in a foreign country.

This rule, however, regarding the delivery of a thing purchased 35 shall be observed in the absence of a rescission. When, however, there is a rescission, the rule must be followed as laid down by Manu⁴ in: "If (anybody), after buying or selling anything &c."

Śūlapāni

Yājñavalkya, Verse 254

- He who does not deliver an article of merchandise of which the price had been received by him, such a one shall be compelled to pay to the purchaser the price together with the interest, if that is received from the country. If, however, it was received from another country then he shall be compelled to pay together with the profit thereon. Vishnu¹ says 'One who having received the price of a thing sold, does not deliver : e does not give to the purchaser, such a one shall be compelled to pay to him together with interest, and he should be punished by the King with hundred 'panas' (254)

Yājñavalkya, Verse 255

- A commodity, even if sold once may be sold again, if the first purchaser do not take it, and if there is loss on account of the fault of the purchaser, the same shall be his alone

- Mitāksharâ — Moreover, when, however, the purchaser, repenting of his purchase, does not desire to take delivery of the commodity sold, then the commodity even when sold (once) may be sold to any other. Also when the purchaser does not accept (delivery of) a thing when (it was) offered by the seller, and if the commodity is destroyed by act of God or of the king, then the loss will be of the purchaser alone, since the loss happens through the fault of the purchaser in refusing to accept the commodity.

Śūlapāni

Yājñavalkya, Verse 255

- When an article has been sold and the first purchaser does not accept, it should be sold (again). If there is any depreciation through the fault of the purchaser then that is of the purchaser himself (255)

Yājñavalkya, Verse 256

- Should a commodity be injured by act of God or of the king, the loss shall be of the seller alone if he did not deliver it on a demand

- Mitāksharâ — Moreover, when, however, the seller does not deliver a thing even upon request by the buyer, even when he has not rescinded (the sale), and it is injured by an act of God or of the king, then such loss is of the seller alone. Therefore another unblemished commodity, similar to that which has been damaged, must be delivered to the buyer

Sûlapâni

Yājñavalkya, Verse 256

If through the act of king or God any blemish occurs in the article any depreciation that follows is of the seller only, if it is not delivered to the purchaser who was asking for it. It follows, therefore that if the purchaser does not accept when it is being delivered, then the fault is of the purchaser (256)

5

Yājñavalkya, Verse 257

If a man sell a commodity to one, when it had already been sold to another, or a blemished commodity as unblemished, the fine shall be double the price of the thing

10

Mitâksharâ --Again, he who sells or delivers a thing to one when it had already been sold to another, and even without rescinding (the first sale), or sells a commodity which has a flaw, by patching up the flaw, then a fine double in amount of the price of the commodity must be understood Nârada¹ also has stated a special rule in such a case "When a man sells something to one person and delivers it to another person he shall be compelled to pay double the amount and also a fine of an equal amount (8) When a man exhibits a faultless thing but sells one having a flaw, such a one shall be compelled to pay twice its value and also an equal amount as fine (7)"

15

20

The whole of this law is to be observed in the case of a commodity, for which a price has been paid In the case of a commodity, however, for which no price has been paid, excepting such special agreement as may have been entered into under the terms of the merely verbal negotiations between the seller and the buyer, there is no liability for entering (into a new transaction) or receding (from one already entered into) As says Nârada¹ "Thus has the law been declared with regard to a merchandise for which the price has been tendered, when the price has not been tendered, there is no rescission² to be imputed to the vendor, except in the case of a special agreement"

25

30

1 Ch VIII 8-

2 Ch VIII 10

3 Dr Jolly's edition reads (१२५) This appears to be a better reading But all the editions of the Mitâksharâ read (१२४)

Vīramitrodaya

Now "when a commodity has been sold for a price and is not
"delivered to the purchaser, it is termed 'Non-delivery after sale' A
"title of law," thus characterized by Nārada¹ the Author treats of
5 the title of law called 'Non delivery after sale'

Yājñavalkya Verses 254-257

When from the purchaser the price has been received by the seller
himself, if he does not deliver the same to the purchaser, then he should
be compelled to deliver the commodity to him together with the increase
10 The increase has been stated by Nārada² "If a man sells property for a
"certain price and does not deliver it to the purchaser, he shall pay its
"depreciation if it is immovable, or the profits if it is a movable
"property. *Kṣhayaṃ*, 'depreciation' i.e. (as for) possession; profits
such as service etc

15 By the use of the word *eva*, 'only', (however) is understood to be
in the absence of a repentance by the purchaser. On a repentance
by him, however, the rule laid down by Manu³ should be followed
"If anybody in this world after buying or selling anything repent
'(of the bargain), he may give or take back that commodity within
20 "ten days Nārada⁴ "If there is a fall in the market value itself of the
"article, the purchaser shall receive both the article itself and the
"difference in value This law applies to those who are inhabitants of
'the same place, but to those who travel abroad, the profits arising from
'(trading in) foreign countries shall be made over. Vishnu⁵ "He who
25 "does not deliver to the purchaser a commodity the price of which has
"been received by him, shall be compelled to deliver it with interest
'and he shall be fined hundred panas by the * (254)

When even after the commodity was sold, it was
the first purchaser on account of his change of mind not taken over by
30 of inspection or after that time, while that commodity is being sold if
there is a depreciation in the value of the commodity is being sold if
defect occurring in it by reason of the fault of the purchaser on account of a
perly inspecting it or by an act of God or of the buyer not pro
depreciation will be of the purchaser only. If when, then that
35 demanded it and the seller did not deliver, then the loss to the purchaser
himself This is the meaning The word *api* is used of the seller

1 Ch VIII 1

2 Ch VIII 4

3 Ch V d in the sense

4 Ch VIII 5

5 Ch V 1-2 p 126-27

of the purchase; nor shall the contract be rescinded by the seller who does not perceive any loss in the commodity consequent upon its excessive value (in the market)

If, however, there is a cognition of increase or decrease, that the purchaser or seller or both may rescind follows by the negative inference

The time for rescission has, however, been mentioned by Nārada¹
 “When a purchaser, after having purchased an article for a (certain) price, considers that he has made a bad bargain he may return it to the vendor on the same day, in an undamaged condition (2) When
 10 “the purchaser returns it on the second day the seller shall deduct
 “a thirtieth part of the price, twice as much on the third day, after
 “that time the thing belongs to the purchaser alone”

Page 112*

In the case moreover, of a sale or purchase made without an examination (of the commodity) the time for rescinding the contract
 15 on account of a defect in the commodity has already been indicated in the text² ‘Ten one, five, seven days &c. Therefore from this text it may be inferred that a knowledge of the increase or decrease in the value may serve as a reason for a rescission. Moreover, from the interval for testing a commodity purchased may be inferred the
 20 reason for a rescission on the ground of defects in the commodity. Therefore, whoever makes a rescission in the absence of the three reasons—viz. a defect in the commodity, or an increase or decrease in its value—even within the time allowed for rescinding then he shall be fined a sixth part of the (value of the) commodity. The same
 25 fine shall be inflicted on one who makes a rescission after the lapse of the interval allowed for a rescission, even though there be (good) reason for a rescission³

1 Ch IX 2 3 C/o also Yajñ II 177 p 1.02 above

2 Of Yajñavalkya II 177 see page 1202 above. Balambhatta attributes it to Manu apparently a mistake

3 So according to Vyāsaśara there are only three main reasons for rescinding a contract of sale or purchase: (1) A defect in the commodity or (2) advantage or (3) loss or error on account of the ignorance of actual rates prevailing in the market at the time of the sale. These are the only reasons. And secondly the rescission on account of these reasons must be made within the time prescribed. So that a rescission shall not be allowed if made after the lapse of the interval prescribed for a particular case

In the case of things which do not suffer by enjoyment, and which have a fixed value, the fine for one making a rescission after the time for rescission is over, shall be imposed in accordance with the rule laid down by Manu¹ "But after (the lapse of) ten days he may neither give it nor cause it to be given (back), both he who 5
"takes it (back), as well as he who gives it (back), shall be fined
"by the king six hundred *panas* "

Thus ends the chapter called *Non delivery after sale*

Viramitrodaya

Now of the rescission of purchase which has been stated before 10
generally, the Author mentions the special rule in point in regard to
non delivery after sale

Yājñavalkya Verse 258

A rescission should not be made by a trader when he has purchased without knowing the depreciation of the value of the commodity. Having sold without knowing the appreciation in the price of 15
the commodity, a rescission should not be made. Thus one who makes
a rescission even without knowing, makes himself amenable for penalty,
for a sixth of the price of the commodity. By the use of the word *cha*,
'also', is meant that a rescission may be made upon a discovery of the 20
fall or rise. Nor is there the text 'having sold etc' included

*Bṛhaspati*². 'What has been sold by one intoxicated, or insane, or
"at a very low price, or under the impulse of fear,³ or by one not his
'own master, shall be relinquished by him (the purchaser), or (the seller)
"may recover it back. The connection is that the purchaser shall give 25
it up, and the seller shall take it back.

Thus ends in the commentary on Yājñavalkya the Chapter on
Non delivery after sale

Sulpani

Yājñavalkya Verse 258

When merchants make purchases without ascertaining the appreciation 30
or depreciation of the articles of sale a rescission should not be made.
When one makes a rescission, he shall be liable to pay as penalty one-sixth
part of the price of the articles sold. *Narada*⁴ states a special rule (see
above *Mitāksharā* p 1302 l 7-12) (258) 35

1 Ch VIII 223

2 XVIII 3

3 The Benares edition reads *भय* 'fear', while Dr. Jolly in his Extracts of *Bṛhaspati* had it appears, the reading *भय* which is better and therefore followed and is accepted in the translation

4 Ch IX 2-3

CHAPTER XXII

Trading by Partnership

Now is being described the Title of Law called 'Trading in Partnership'

Yājñavalkya, Verse 259

Among traders carrying on a business in partnership with a view to gain, the profit and loss shall be according to the (contribution of each to the) stock, or according as was determined by special agreement.

Mītākṣharā—Samavāyah, partnership, is an agreement¹ by which several persons agree to do any business together. Under such an agreement, for such work as is done by each of the people, such as traders, actors, dancers and like others working with a view to gain, the share of profit or loss lābhālābhaḥ, i.e. of an increase or decrease, will be determined by regard to the contribution of each i.e. according to the quantity of stock for the use of the trade supplied by each. Or, the shares (in the profit and loss) shall be determined as fixed upon by any agreement or compact (between the parties), such as, having regard to the chief qualities and capacity in each, such a one should be entitled to two shares, such another one share, and the like

20

Vīramitrodaya

The Author now begins the title of law known as "Trading by Partnership"

Yājñavalkya Verse 259

Of the traders combining together for profit and engaging in a transaction, the profit or loss shall be (determined) according to (the contribution of) the original amount of money. Or if the profit and loss have been the subject of a special agreement, then these shall be according to such arrangement in that manner in the case of traders, actors etc (259)

Śūlapāni

30

Yājñavalkya, Verse 259

Of tradesmen engaging in trade by a combination with a view to profit the profit or loss should be understood to be according to the share of the capital of each, or the same should be determined as may have been previously agreed to (259)

1 An agreement thus 'We will all do this business together'

Yājñavalkya, Verse 261

The king shall take as a tax a twentieth share of the price fixed (by him) A Commodity which has been specially reserved as also that which is worthy of a king shall, if sold, belong to the king.

- 5 Mitāksharā — For fixing the price of a commodity *e g* such an article of merchandise shall have such a price *i e* by reason of the same being determined upon by the king he (*i e* the king) shall receive a twentieth part of the price as a tax. That, moreover, which *vyāsiddham*, had been specially reserved *i e* prohibited by the king from
10 being sold anywhere else, also that which is worthy of the king, such as jewels, rubies and the like, even when forbidden, if the same be sold out of greed for profit without informing the king *tadrājagāmi* the same shall belong to the king, *i e* all that merchandise the king shall appropriate without (regard to) the payment of the price

15

Vīramitrodaya

On the occasion of the treatment of the right to a share, the Author mentions the king's right to a share

Yājñavalkya Verse 261

- 20 By reason of his fixing the price the king shall take a twentieth part, the meaning is that the king shall take from the price. Some, however, hold that the king should not take a share, but the commodity itself or its price in entirety should be taken by the king. *Vyāsiddham*, 'specially reserved, *i e* 'this must not be sold here, a commodity which has been thus prohibited by the king but has been also there
25 *Rajayogyam cha*, 'also that which is worthy of a king, such as a rouse elephant or the like although not prohibited have been sold elsewhere without the permission of the king, *tad rājagāmi*, 'that goes to the king, may be appropriated by the king *i e* even without his paying the price (261)

30

Sūtapāni

Yājñavalkya Verse 261

- On account of the determination of the price the king may take a twentieth part of the price as his tax. Such article, moreover as may have been prohibited by the king as for sale (in the market) on account of
35 its extraordinary character as also such as is fit for the king as *e g* a white chowry such article even though sold is of the king (261)

Yājñavalkya, Verse 262

He who falsely declares the quantity, who avoids a tolling office shall be compelled to pay eight times, as also he who purchases or sells fraudulently.

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Mitāksharâ — That trader, again, who conceals the (real) quantity of a commodity with the object of defrauding the customs (officers), or skulks away from the tolling offices, as also he who either purchases or sells an article which is the subject of a dispute (as to) 'whether it belongs to this or it is of that man', all these shall be fined eight times the amount of the value of the commodity

Viramitrodaya

The Author mentions the penalty for one who does not pay to the king and is adverse

Yājñavalkya, Verse 262

One who with a view to evade the payment of the tax declares falsely the measure in quantity of the merchandise such as cloth, pearls, etc., or avoiding the excise officer saying 'this has been deposited by me here, it is neither sold nor purchased,' and thus causing deception, a trader who thus effects a sale or purchases shall be compelled to pay eight times the price of the commodity as penalty. By the use of the word *cha* twice, the Author indicates severally as the cause for the infliction of a fine upon those who deceitfully carry on sales or purchase indicated by the word ending in the present participle termination (262)

Sûtapâni

Yājñavalkya, Verse 262

He who through covetousness declares falsely at the excise office the quantity of an article for a sale, and one who without paying the toll sneaks off from the excise office, he also who with a view to defraud the king at the time of the sale ultimately fraudulently makes purchases or sales such a one should be compelled to pay as penalty an eightfold of the money defrauded. When, moreover, without even going to the toll office, he goes elsewhere by another road, then the entire property should be confiscated. As says Viṣṇu 'One who evades the toll office, shall incur the forfeiture of the entirety' (262)

Yājñavalkya, Verse 263

A marine officer levying a land cess, shall be compelled to pay ten *panas*. The same shall be (the fine) for not inviting the Brâhmanas and *Pratiseyas*.

- 5 Mîtāksharâ —And again, customs dues are two fold viz one levied on land, and another levied on water. Of these, the tax levied on land has been mentioned in the text: "The king shall take $\frac{1}{20}$ the twentieth share of the price fixed." The tax levied on water, however, has been mentioned in the text of Manu: "At a ferry, a conveyance shall be made to pay one *pana*, a man half a *pana*, an animal and also a woman a quarter and an unloaded man one half of a quarter (404). Conveyances fully laden with vessels shall be made to pay toll at a ferry according to the substance, empty vessels, as also men without a luggage (shall pay) a trifle (405). But a woman who has been pregnant for two months or more an ascetic, a monk, as also a Brâhmana, students of the Vedas, shall not be made to pay toll at a ferry (407)."
- 10
- 15

- Here is another special rule applicable even to both kinds of tolls. "A toll is never levied on a sum less than a *kar hîpana*, it is never leviable on a livelihood gained by art, nor on an infant, nor on a messenger, nor on what has been received as alms nor on the remains of stolen property, nor on a *S'ratriya*, nor on a hermit nor on a sacrifice."
- 20

- That by which a thing is floated is a ferry e.g. a boat and the like. One who is commissioned to recover the toll levied on these is *Tarikah* a Marine Officer. Such a one, when he recovers a toll levied on land shall be fined ten *panas*. *Pesa*, *Tesma* and *Pratiseva* are indicative of one's own house and the (neighbours in its) front or rear. People living in these parts are *Prâtiseyas* or people living in the neighbourhood. Brâhmanas and Prâtiseyas (joined together) make up (the compound expression) 'Brâhmanas and Prâtiseyas'. The non-invitation of these on exequial occasions or the like, when they are accomplished by the study of the Vedas and by their (pure) lives and when he has competence (to invite them)—this itself must be understood to be punishable with ten *panas*.
- 25
- 30

1 Yajñavalkya II 261 p 1306 above 2 Ch VIII. 404 405 and 407

3 i.e. according to the quantity of the goods as well as their value

4 बाह्यजालिनी—बाह्यजालिनी बाह्यजालिनी बाह्यजालिनी ।

—नृचरितिय

6 See Vasishtha Ch XIX 37. Balambhatta assigns it to Manu

Viramitrodaya

Like a trader not paying the tax, a penalty is payable by the officer of the king also when he recovers a tax which is not proper. Intending to lay down this rule the Author states a penalty also for transgressions of a like character.

Yājñavalkya Verse 263

Tarīṭaḥ, 'A naval officer, i.e. one appointed for the water tax, a twentieth part of the price fixed as stated before' when he recovers a tax on land, such a one shall be compelled to pay the penalty of ten *panas*.

Pratūsa is a house in the close vicinity of one's own house. One who does not invite Brāhmanas residing there even when there is occasion for an invitation* to others shall be compelled to pay also a penalty of ten *panas*. By the use of the word *cho*² it is added "if he accepts his invitation." *Manu*³ states the water tax "At a ferry, a conveyance shall be made to pay one *pana*, a man half a *pana*, an animal and a woman, a quarter, and half of a quarter, an unloaded man. Conveyances fully laden with vessels shall be made to pay a toll at a ferry according to the substance. Empty vessels as also men without a luggage a trifle. A man i.e. a man carrying a load."

Here there is a special rule even with regard to the two kinds of tolls. A toll is never levied for a sum less than a *Kāśhapana*. It is never leviable on a livelihood gained by art, nor on an infant, nor on a messenger, nor on what has been received as alms, nor on the remains of stolen property, nor on a *Srotiya* nor on a hermit, nor on a sacrifice (263).

Sulapana

Yajñavalkya, Verse 263

One authorized as a toll officer for the water cess recovering on land the toll which is to be recovered on water should be compelled to pay ten *panas* and one not inviting neighbouring Brāhmanas on an occasion of feast should similarly be fined ten *panas* (263).

1 See verse 261 p. 1306 above

2 अयमिदमन्तरादिभ्यश्चिदन्तरं and appears to be good. A reading अयि अन्तरादिभ्यश्चिदन्तरं is the reading in the Benares edition. This is either a mistake in the reading or that appears to be the illiberal opinion of Mitramisra. This is suggested by the next clause in which he says अन्तरादिभ्यश्चिदन्तरं. This view of Mitramisra appears to be in direct opposition to the text of Yajñavalkya which says अयमन्तरादिभ्यश्चिदन्तरं. If the reading of correct, would give the converse alternative viz. inviting when there is no occasion for it. If the reading is correct is not proper.

3 The text is no *cho* in the original

The Author mentions a rule regarding the property of a trader dying abroad

Yājñavalkya, Verse 264

5 If one goes abroad and dies (there), his wealth shall be taken by his *dīyādas bāndhas* as of his *jāti*, or who may have come; and failing these, by the king.

10 Mītākṣharā—When one of those who trade in partnership goes abroad and dies, then his share, his *dāyādāḥ* i.e. his sons and other lineal descendants, *bāndhavāḥ* i.e. (relations) *ex parte materna*, such as the maternal uncle and others, his *jātayah* i.e. his *Śapinda* relations other than his lineal descendants; or *who may have come*, *āgatāḥ* i.e. such of the members of the joint trading partnership as may have returned from the country abroad; (these) shall take. *Failing these*, *śair viṇā*, i.e. in the absence of these viz. the *dīyādas* and others, the king shall take.

15 By the use of the word *ai*, 'or', the Author indicates the uncertain² nature of the right of the *dīyādas* and others to succeed. The rule as to the order of succession, however, must be understood here to be the same as that propounded in the text³. "The wife, the daughter &c."⁴

20 Among merchants also, he who is competent to offer the funeral oblation and pay the debts and do similar acts shall take. If there is no distinction as to the capacity (for doing the above), all the merchants trading together in union shall take after dividing. In the absence of these also, after waiting for the appearance of the *dīyādas* and others for ten years, and on their non-appearance, the king may take it himself.

25 All this has been made clear by Nārada⁵. "Should one of the "partners die, his *dīyādas* shall get his share (7). In the absence of "the *dīyādas*, any one (of the partners), if all are equally competent. "On failure of these, he shall keep it well guarded for ten years (17). "When such property without an owner, and unclaimed by a *dīyāda* 30 "has been preserved for ten years, the king may then take it over to "himself. Thus, the law will not be violated."

1 The whole of this passage has been translated and referred to by Meerts West and Habbé in their *Hindu Law* at p. 133 seq. and in *Satrahna* vs *Mandak* 22 Bom. 206 (1911) at pp. 218-219.

2 *Śāstrī* on *Pādāpāda*—optional Contingent.

3 *Yājñavalkya* II. 175 & 176. See p. 100 above.

4 The *śair* = *śair* that text will be *śair* and it is *śair* (Contingent Nishikama) and the *śair* of the right of the trader. See p. 111 7, 12-18.

Viramitrodaya

If among men trading by partnership one dies, then by whom should his share be taken ? So the Author says

Yājñavalkya Verse 264

While one trading as a partner dies his share his sons and the rest, his mother's sister's sons and the like of his sapindas who have gone there shall take the property according to the right. By the word *ud*, 'or', the alternative choice as well as the relative priority are included. Otherwise the whole goes to the king (264)

5

Sulapāṇi

Yājñavalkya Verse 264

Among persons trading by partnership if one dies in another country, his property, his sons etc. in their absence, uncles etc. in their absence kindred, and in their absence—except in the case of the property of a Brāhmana—the king, shall take (264)

10

15

Yājñavalkya, Verse 265 (1)

A man of crooked ways let the other partners expel without profit, one unable (himself) may have it done by another

PAGE 144*

Mitaksharâ:—Moreover, *jñmah*, a man of crooked ways, i.e. a cheat, such a one, the other partners *nigatalabham tyajeyuh* should deprive of all profit and expel, i.e. deprive. He, moreover among partners carrying on a joint trading business who *asaktah* is unable to supervise the vessels of merchandise and do other like acts such a one *kārayet*, may cause his own duty, such as that of conveying the goods of trade, or supervise the accounts of the receipts and debits relating thereto and like other acts *anyena, ty another*

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20

25

The Author extends the law (relating to partnership) among traders as stated before, to priests officiating at a sacrifice and the like others

Yājñavalkya, Verse 265 (2)

30

By this has (also) been stated the law regarding officiating priests at sacrifices, husbandmen and artisans

Mitāksharā:—Anena, by this i.e. by the statement of the rule¹ regarding traders i.e. "the profit and loss shall be according to the stock &c", *ritvijām regarding officiating priests at sacrifices* such as the *Hotar* and others, the husbandmen, as also the actors, dancers and others maintaining themselves on arts, *vidhāh, the law, i.e. the rule of conduct ākhyātah has been stated*

Even there, a special rule has been stated by Manu² regarding the distribution of the property of priests "Among all (the priests) officiating at a sacrifice, those (first four who are) entitled to a half (*Ardhānah*) are the first (to receive), the next (four) one half of that, the next entitled to a third share, one third, and those entitled to a fourth a quarter" The meaning of this passage is this under the text "in a *Jyotsishtoma*³ sacrifice, they shall endow it with a hundred" a hundred cows have been enjoined as an endowment for

1 Yājñavalkya II 209 see p 1304 above

2 Ob VIII 210

3 The principal priests officiating at a sacrifice who are called *Ritviks* are sixteen in number distributed under four classes, each class having four members

(1) The first class includes those who are entitled to a half of the entire *Dakṣiṇā*, and are known as the *Ardhānah*

(2) The members of the second class are entitled to a half of the first and hence are known as *Tadarhānah*

(3) The third class are entitled to a third of the first class and are called *Trigānah*

(4) The fourth class are entitled to a quarter of the first class, and are known as *Pādānah*

Although one hundred cows are considered as a proper *Dakṣiṇā* for a sacrifice, still to make the whole distribution commensurate, 96 is the number chosen (see Amara I 3 16) so that the first class take 48 cows the second class 24, the third 16, and the fourth, 12, thus making up the total of 100 cows. This is one way of distribution and has been expounded in the text of the *Mitākshara*. Another way of distribution is suggested by some e.g. by Harada, according to which the whole is divided into 20 shares and the several classes shall receive 12, 6, 4 and 3 shares each respectively, a mode which, it will be seen only defects in the method of working out the figures but yields the same result

4 *Jyotsishtoma* is a Soma sacrifice and is considered as the type of a whole class of sacrificial ceremonies. At this sacrifice sixteen officiating priests are required by law, and these are grouped into four classes each class having again four priests in it as described in the note above, and in the text of the *Mitākshara*.

the sacrifice as in levative of respect to the *ritviks* or priests officiating at the sacrifice. The *ritviks* moreover, are sixteen in number i.e. the *Hiti* and others. There, in answer to the question what person is entitled to what share? the rule in the present text is laid down. Of all the sixteen priests officiating at a sacrifice those who are the chief 5
i.e. the *Hotā*, *Adhvaryū*, *Brahmā* and *Udgātā* these are entitled to a half of the hundred cows i.e. equal to forty eight cows, to make the division complete into entire numbers¹. Those next in order i.e. the *Maitravaruna*, *Pratiprasthā*, *Brahmanichchikṣva*, and *Prastotā* are entitled to a half of that i.e. half of the principal share i.e. twenty four 10
(cows). Those, moreover, who are entitled to a third i.e. the *Achikṣhā*, *Nehitā*, *Agnidhra* and *Prañārtā* these being entitled to a third i.e. a third of the principal share shall take a third i.e. sixteen cows. Those indeed, who are entitled to a quarter i.e. the *Gṛhastvā*, *Unnetā*, *Potā* and *Subrahmanyā*, these shall take what amounts to a fourth part of 15
the principal share i.e. twelve cows.

Indeed how can this rule as to shares prevail? There is here neither a compact (to that effect), nor a combination of capital, nor any express text, under which there may be a rule as to the shares. And under the maxim² of law i.e. 'In 20
"the absence of a special rule the shares shall be equal" it is proper that all shall be entitled to equal shares or proportionately to their labour.

Here the answer is. In the *Dvadasaha*² sacrifice which is only a variant of the principal sacrifice called *Jyotishoma*, it is not proper to suppose that (the recognition of) 25
the *Ardhmas*, *Trigūnas* and *Pudmas* is a mere repetition of something

1 त्वं स्वाध्यायकः Jaimini X. III. 53 Thirteenth Adhikaraṇa. See note above. The relative proportion of the shares of the several classes mentioned in the text will not be maintained if 100 be taken as the total number in relation to which the half &c. is to be determined. Moreover according to the lexicon *Aṣṭa* (I. 3. 16) the word *ardha* half when in the masculine gender is used generally to indicate 'a portion', and not a precise half. Thus 48 is chosen as the figure for the first class and then the numbers 24, 16 and 12 respectively are deduced by the method described above.

2 *Dvadasaha*—is an offshoot of the principal sacrifice called *Jyotishoma* which is called the *Prakṛti* i.e. the basic sacrifice as opposed to a *Vikṛti* which means a variant of the base with slight variations as to details.

already established, if in the principal sacrifice, the *Manthārūna* and the other priests were not entitled to a half, a third, and the fourth shares respectively. Therefore the rule as to (particular) shares as mentioned before (necessarily) follows from the very force of the expressions *Arhins* &c used in the Veda. Thus there is no fault.

Thus ends the Chapter in the Law of Partnership

Vīramittodaya

Who indeed will not get is share? So the Author says

Yājñavalkya, Verse 265 (1)

10 *Jihmah*, 'crooked', i.e. one who by his tricks is instrumental in the non accomplishment of the business of the partnership such a one they (i.e. the partners) should expel i.e. drive out, without (giving any) profit. The meaning is that if he is unable alone (to do it) then he should have his part performed by another, but should not practise deceit [265 (1)]

1 *Samādhya*—'name, expression,' one of the six means of proof of the *Vinyoga-vidhi*, the other five being *Śruti*, *Linga*, *Vālya*, *Prakarana* and *Sihāna* (See General Note on the Hindu Law Texts p. IV)

The meaning is thus. The objector maintains in the statement of this objection, that the persons to whom the terms *Arhins*, *Trigunas* &c. are applied, are not necessarily entitled to a half, a third, or a fourth respectively, in every other sacrifice also, simply because of the fact that they get those shares in the principal sacrifice of *Jyotishtoma*. This would be justifiable if it were a mere repetition of what had already been established. But no such rule has been established after a proper demonstration, and therefore there is no room for its adoption as a mere repetition (*Anusāda*). The answer, however, is that it is not as a repetition (*Anusāda*) of anything established (*Siddha*) that this rule as to shares is being propounded, but that the very force of the expressions *Arhins*, &c. used in the Veda carries with it the meaning that the several priests thus indicated are entitled to a half, a third, and a fourth share respectively.

N B An *Anusāda* (अनुसाद) is an explanatory repetition of, or reference to, what is already mentioned.

It is also called अनुसाद the subject of the assertion as opposed to विषय, the fact or the quality asserted of the subject; the predicate, and is to be proved or established. The अनुसाद is already known or assumed as established, while the विषय is that to establish the connection of which with the अनुसाद is the object of the proposition. Thus 'Devadatta is wise,' Here Devadatta is the अनुसाद or the subject and being already known or assumed as established is from another point of view also an अनुसाद, but 'wisdom' is that which is to be established with reference to Devadatta and is therefore the विषय. This may be further developed to clarify the above thus 'the wise Devadatta is good.' Here Devadatta and his wisdom are known, and his goodness is to be established.

Vīramitrodaya

The rule as to profit and loss stated before¹ as the law among the tradesmen, the Author extends in the case of sacrificial priests and others

Yājñavalkya, Verse 265 (2)

5

Anena, 'by this', i.e. by the statement of the rule as stated before, the law has been stated for the sacrificial priests, such as the *Hotā* etc., for husbandmen i.e. those who carry on agriculture, for artisans, i.e. those who engage in works of art, dancing etc

Regarding the division of property among the sacrificial priests *Manu*² states a special rule "Among all (the priests officiating at a sacrifice,) those entitled to a half are the first (to receive), the next (four) one half of that, the set entitled to a third share, one third and those entitled to a fourth, a quarter 10

It is stated in the Vedic text that in a *Jyotishtoma* sacrifice they shall endow it with a hundred, by this a hundred cows has been enjoined There, among the sixteen sacrificial priests, those who are the first four, viz the *Hotā*, *Adhvaryu*, *Brahmā* and *Udgātā* are entitled in the capacity of their first right to a share to a half by less i.e. for these four, forty-eight cows, for the next four viz *Madhvavarna*, *Pratipras- 20*
thata, *Brakmanāchchhamasi*, and *Prastotā* will have half of it i.e. will be entitled to twenty-four as their share, the third viz *Archakrādātā*, *Neshtā*, *Agnidhva* and *Pratiharā*, these four, are sharers for a third i.e. the third part of forty-eight thus for them sixteen cows The fourth, moreover, viz *Gravastud*, *Unneta*, *Potā* and *Subrahmanyah*, they are the sharers of 25
the fourth of the first part, thus to them twelve cows are to be given Moreover, in whichever performance whatever quantity has been stated as the *dakṣina* for that occasion which he should take these or all these all of them should take together Under the text "He gives two golden lights to the *Adhvaryu* such *dakṣinas* as for example, for the sacred 30
bath etc as have been stated in particular connections should be taken by him only, and here there is no division This is the meaning. *Sankha* and *Likhita* "Now after the *Rdubh* has been installed, after him another should be installed the *dakṣina* shall be for him only who has been installed before One who is installed after, may 35
get a trifle, if he stays on for the period He should bide the time waiting for the occasion He should not sacrifice for another He

- “should finish the sacrifice, having gone away, if one returns, he may
“get a trifle, if, however, the chief priest goes out, that priest should
“be fined a hundred coins.’ *Manu*¹ “After the *daśahūds* have been
“paid, if he abandons his work he shall obtain his full share and have it
5 “performed by another : *e.* by the son or the like. *Brhaspati*”. “What-
“ever has been contributed jointly together, that should be demanded in
“the same manner Here if some one does not make a demand such a
“one loses the profit Similarly² “When by the deficiency of one
“partner as to cattle or seeds a loss happens in (the produce of) the field,
10 “it must be made good by him’ The meaning is, that on account of
“whose contribution there is loss to the field by him should it be paid.
“Also when goldsmiths or other artists operate jointly, upon (a work
“of) art, they shall share the profits in due proportion corresponding
“to the nature of their work. Profits : *e.* wages *Kātyāyana*³ : “If
15 “artisans : *i.e.* apprentices, more advanced students, and teachers (are
“employed together in one undertaking) they shall receive one after
“another in order one, two, three, and four shares *Brhaspati*⁴ “The
“same rule has been declared for dancers by those conversant in law
“The expert in *tāla* (beating time) gets a half more, while the singers
20 “take equal shares.’ Half more : *e.* together with the half.

Sūtapāṇi

Yājñavalkya, Verse 265

- One who is crooked : *e.* deceitful, the partners should expel by cutting
off his share One who is unable to look after a vessel etc should have
25 the work done by another

The law relating to the sacrificial priests husbandmen, and artisans
is the same as stated (here) for tradesmen (265)

1 Ch VIII 208

3 Ch XIV 21

5 Ch V 132

2 Ch XIV 19

4 Ch XIV 28

6 Ch XXIV 179

CHAPTER XXIII

On Theft

Now commences the chapter on Theft Its definition has been
 Definition of Theft stated by Manu¹ 'An offence, which is committed
 "in the presence, and with violence, would be called 5
 "Sâhasa (i.e. robbery), if (it is committed) in the absence, it would be
 "(called) Steya (theft), as also where anything is denied after it has
 "been committed."² In the presence, i.e. in the presence of the owner
 guarding the property, or the king, or the chief officer, or like,
 other. With violence, i.e. with a show of criminal force, when a depri 10
 vation of another's property or any such similar act is committed, it
 becomes a Sâhasa or robbery. Theft, moreover, is two-fold 'In
 'the absence' i.e. where, in the absence of the owner of the property,
 or like another, another's property is taken away by deception it is
 called theft Where, moreover, even when the act is committed in the 15
 presence, (the actor) denies (it) through fear (saying) 'I did not do this',
 even that is theft It has also been said by Nârada³
 PAGE 145* "Taking away, by any of these several means what
 "soever, by deception, property of persons asleep,
 "or disordered in intellect, or intoxicated, sages declare to be theft" 20

There, as the catching of a thief is necessary for punishing him,
 and as for catching him it is necessary to detect him, the Author
 presently mentions the means of detecting him

Yājñavalkya, Verse 266

A thief is arrested by the police officer, by means of the lost article 25
 or by the foot-mark, a man once convicted of an offence as also one who
 lives in an unknown place

Mitāksharâ—One, who is declared by the people "This is a thief"
 chaurô—such a one should be arrested by the police officers, grâhakah
 i.e. the state officers, such as the watchmen of the place and the like 30
 others, or he may be apprehended by means of the loptra lost article,
 i.e. the vessel &c. which had been taken away, as (it is) an index of

1 Ch VIII 332

2 ५५३ is another reading which is seen in Manu and elsewhere In that
 case it would mean 'after it has been taken away'

3 Ch XI 17V.

- theft, or by tracing the foot marks, immediately from the day of the loss. He, moreover, *pūṛva karmâparâdhî* who had once been convicted of an offence, *i.e.* who had once been found out to have committed a theft, as also one *asuddhawâsakah* who lives in an unclean place, *i.e.* one whose place of residence is unknown: *e.* not well known, such a one also may be arrested.

'Sūlapāni

Yājñavalkya, Verse 266

- By the officers of the police one who has been pointed out as a thief should be apprehended for theft by a mark or sign of theft, by foot-mark: *i.e.* commencing with the place of loss and in pursuit of the foot-steps of the thieves etc., or previous acts of robbery, and one who has not established his place of residence (266)

Yājñavalkya, Verses 267-268

- Others also may be apprehended on suspicion, such as those who conceal their caste name and the like, those who are addicted to gambling, women, and drinking, as also those whose mouth becomes parched up and voice falters (267),

- Also those who make inquiries about another's wealth and houses, whose movements are mysterious who having no income spend much and those who sell lost articles (268)

Mitāksharâ—Moreover, not only that those mentioned before should alone be arrested, but *anyepi*, others also, by means of marks to be presently mentioned *saukayâ grabyâh*, may be apprehended on suspicion

- 'On account of the concealment of the caste', *e.g.* in the form 'I am not a Sūdra', on account of the concealment of the name *e.g.* one saying 'I am not Lapittha'. And by the use of the term *Ādi*—'and the like,' those also should be apprehended, who are exposed by the concealment of their own country, village, family and the like.

- Those who are excessively addicted to gambling, public women, drinking and other similar vices, as also one who when accosted by the police officers 'whence have you come?' *sushkamukhah*, has his mouth parched up, or *bhinnaśwara*, his voice falters, then he also may be apprehended. By the use of the plural number are included also those whose forehead¹ perspires, and the like others

Likewise those who without any cause make inquiries, 'how much wealth has he?', or 'where is his house?', or those who move about concealing their identity by putting on a disguise, those also who having no income spend much, as also those who are vendors of lost articles, i.e. of the old clothes, broken pots, and similar other articles the owners whereof are not known, all these may be apprehended on suspicion as thieves.

Having thus apprehended people having various marks of suspicion about their having committed a theft, a decision as to whether these are thieves or good people should be declared after a minute inquiry, and not by a mere discovery of the signs (of a thief) as it is possible that the marks of (having) the lost article and others may be found even on one who is not a thief, as says Narada: 'An article should be determined upon as a lost one by special investigation i.e. when it had dropped down from another's hand, and was discovered on the ground, without any special desire for it, whether it was deposited there by a thief. Similarly the untruthful appear as the truthful, likewise, the truthful look as if they were untruthful, thus various aspects (of things) are seen (in this world), therefore an investigation has been prescribed.'

Sūtapāni

Yājñavalkya Verse 267

Others also besides those stated should be apprehended on suspicion as thieves by the denial of the name etc. Denial of name such as 'I am not such a one' denial of caste such as 'I am not a Brāhmaṇa'. By the use of the word *Adi* and the like, are included the country the family the place etc. Similarly those addicted to gambling. In these manner when asked 'who are you?', 'Whence are you coming?' those whose mouths become parched and the voice breaks these also should be apprehended (267).

Yājñavalkya Verse 268

Those who make enquiries about the property of others as also about the houses those who move about secretly those who having no income incur expenditure those who dispose of broken earrings and the like (these) should be apprehended on suspicion (268).

The person thus apprehended on a suspicion of theft must prove himself innocent; so the Author says

Yājñavalkya, Verse 269

5 If one who has been apprehended on suspicion do not clear himself from the (charge of) theft the king shall compel him to make good the lost article, and punish him with the penalty for a thief

10 Mitaksharâ—If one apprehended on suspicion as a thief does not clear himself from that charge, then he shall be compelled to pay the amount and be liable to corporal punishment as will be presently mentioned. Therefore, he should be cleared either by human¹ proof; or in its absence, by an ordeal

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Indeed, how can the statement *c g* "I am no thief" be possible as evidence in an answer² of denial, because it is negative in its nature. The answer is the admissibility of an affirmative as well as a negative proof in an ordeal has been demonstrated in the text³ 'Or by consent any one (of the two) may perform' More-over⁴, although human proof is not possible in an answer of a simple denial, still when it is joined to a special plea, which is of an affirmative character, and then becomes 'a combination of a denial and an exception', it makes it possible even for the negative evidence to be adduced *c g* if the accused prove by evidence his statement *c g* "At the time of the loss or theft I was in another place", the absence of theft (by him) becomes necessarily proved, and thus indeed there follows an exoneration

1 See p 713 II 21-24

2 See Text p 7 Translation p 661, II 16-18 above

3 Of Yājñavalkya II 96 (1) See p 913 above

4 See pages 664-666 above. The meaning is that a statement in a defence which is merely of a negative character cannot be established by proof positive—*c g* when a man says 'I have not committed this theft'—unless he can establish some positive fact which will collaterally support his negative answer, *c g*, by his setting up an alibi when he can affirmatively prove that he was in another place at the time when the theft was committed. And for this he will have to file a mixed plea 'combined of a denial and a special plea.'

Vīramitrodaya

The Author treats of the law of theft by a separate chapter. There, first the Author mentions the means of detecting a thief

Vāṇavalkya, Verses 266-69

Grāhakaish, 'by the police officers, & c. by the servants of the king authorized to arrest, or by another, such as the owner of the property etc., *loṣṭrena*, 'by (means of) the lost article, & c. the vessel etc. taken away, as the sign of theft; or by marks of theft, such as foot-prints etc. at the place of theft, a thief is arrested & c. is determined as having committed a theft.

He also who by his past action, such as theft, had a previous conviction, he who has no fixed place of residence, such a one also is apprehended & c. is suspected of having committed a theft (266)

Not only these two alone may be apprehended on suspicion, but those addicted to gambling etc., when asked "who are you?" exhibit 'a parched mouth and a hoarse voice', or those who ask questions about the property or houses of others, those moving about by disguising themselves, those who without any income spend much, as also those who sell old clothes, vessels etc. of unknown owners should be subjected to the suspicion of theft (267-68)

When after one is subjected to the suspicion of theft, he does not acquit himself as innocent of theft by witnesses, ordeals etc. then he should be compelled to pay the lost property to the owner, and the king should punish him with the first amercement which is the penalty for a thief, as will be stated hereafter

By the use of the word *atha*, 'thereafter', is meant 'after the lost property is found, the Author suggests that it is only in its absence that the foot marks etc. should be traced. By the use of the word *cha*, 'and', his fondness for theft, and by the use of the word *tathā*, 'also', is included the determination of the family etc., the word *ca*, 'also', connected with the first half is meant as a means of determination by the exclusion of any other alternative, by the use of the word *api*, 'even', as also the use several times of the word 'cha' are included those who offer food, shelter etc. to the thief and several others stated in several other *Smṛitis* (266-69)

Śūlapāni

Vāṇavalkya, Verse 269

When one who has been apprehended on suspicion as a thief, if he does not exonerate himself by visible or invisible means or does not acquit himself, then he should be compelled to pay the stolen property, and should be sentenced with the punishment for a thief (269)

The Author mentions the penalty for a thief

Yājñavalkya Verse 270 (1)

Having compelled the thief to restore the properly stolen (the king) should punish him by the several (modes of) corporal punishments

- 0 Mitākṣharā —He, however who either by means of the tests stated before, or by means other than those has been proved to have committed a theft, should be compelled to make over to the owner the property *apahṛtam* stolen either the thing itself or by determining its equivalent (in money) *viravidhairwadhairghātayet* and (the king) *et nūd*
10 *punish him by the several (modes of) corporal punishments*

- This, however has a reference to articles of a superior quality, in the case of which the punishment of the highest amercement is incurred, and does not hold in the case of the theft of articles of small or middling value such as flowers clothes &c. Since on account
10 of the text of Narada: viz 'The series of punishments, which has been "ordained by the wise for the three kinds of Śūdras is equally applicable to theft, according as it concerns one of the three species of articles in their order' The corporal punishment, which is ordained for a Śūdra of the highest order, has been assigned in the case of articles
20 of superior value. What moreover has been observed by Vṛddha Manu in the text 'The property of these is tainted with sin since it 'has been acquired by illegal means, therefore, the king should inflict 'corporal punishments on them and should not merely inflict a pecu
'niary fine that too has a reference to offences of a serious nature

- 25 The Author mentions an exception in the case of certain thieves

Yājñavalkya, Verse 270 (2)

He should brand a Brahmana and banish him from his kingdom

- Mitākṣharā —Moreover, a Brahmana (who has been found as a) thief the king should not chastise by a corporal punishment, but after
30 branding him on the forehead, he should banish him from his kingdom. The branding too should be with the mark of a dog's foot. For Manu² says 'For violating the bed of the preceptor (the mark of) a female part shall be impressed for drinking spirituous liquor the sign of a 'tavern in the case of a theft, moreover the mark of a dog's foot
35 'should be made, for killing a Brahmana a headless corpse

This proceeding, moreover, shall be observed in the case of one who does not perform the (necessary) expiation after the punishment (was declared) as says Manu¹: "But (men of) all castes who perform the penances as prescribed, must not be branded by the king on the forehead, but shall be made to pay the highest amercement." 5

Vīramitrodaya

Not only should one be arrested on suspicion, but also one about whom the offence of theft has been determined; nor also is the punishment of a money kind such as the highest amercement etc., but even a corporal punishment, banishment etc. shall also be for a thief; so the Author proceeds 10

Yājñavalkya, Verse 270

By several (varieties of) corporal punishments such as impaling on a cross, lopping off of the hands and the like means of corporal punishments for thefts in the case of others (which will be stated hereafter), for like cases the Brāhmaṇas should be branded on the forehead and banished from one's Kingdom (270). 15

Sūlapāṇi

Yājñavalkya, Verse 270

Vadhaś, by corporal punishments, i. e. by means of punishments to be stated hereafter; *sachīkham*, 'with a brand,' i. e. together with the mark of his own foot. As says Bṛhan Manu: "On account of the property having been acquired by illegal means, the wealth of these is tainted with sin. Therefore the king should inflict corporal punishments on them, and should not merely inflict a pecuniary fine" (270). 20 25

The Author mentions the means of getting at the stolen property after the thief has been discovered

Yājñavalkya, Verse 271

In the case of a murder or a theft, the blame attaches to the village-officer, when the offender has not (been traced to have) gone out; to the owner of a pasture ground; to the detectives of thieves, when (the offence is committed) on the high-way or in a non-pasture ground. 30

Mitākṣharā :—If the killing of man or of any other living animal, or a deprivation of property, takes place in a village, then the blame for neglecting a thief would be that of the headman of the village 35

alone; and to atone for it, he himself must catch the thief and hand (him) over to the king. When he is unable to do that, he should pay the stolen amount to the owner, if he does not point out the foot-marks of the thief to have emerged from out of the village and beyond it.

- 5 When, moreover, such marks are pointed out, where the same (appear to) enter, the owner of such property alone should make over the stolen amount. Likewise Nārada¹ also says: "He, within whose pasture-ground a robbery has been committed, must trace the thief to the best of his power, or else he must make good what has been stolen, when the
- 10 "foot-marks cannot be traced beyond (into another man's ground) (16). "When the foot-marks, after leaving that ground, are lost and cannot be traced any further, the neighbours, the watchmen on the road, and "governors of that region shall be made to pay² (17)."

- When, however, the theft takes place in a pasture-ground, the responsibility rests with the owner of the pasture alone. When, however,
- 15 the deprivation takes place on the road itself, or in a *nonpasture ground*, *awitake*, i. e. in a place other than a pasture-ground, then the blame lies with the detectives of thieves, or the watchman of the road, or the governor of that region.

20 *Śūlapāṇi*
Yājñavalkya, Verse 271

- When a man or the like has been killed, or a cow etc. has been stolen in a village, the blame attaches to the village headman, if the foot-mark of the man etc. is not seen emerging out of the village "Outside the
- 25 village," however, i. e. on the road, then it (i. e. the blame) is of the owner of the pasture ground. In non-pastures i. e. places other than pastures such as fields etc. of the officer appointed to guard against thieves (271).

Yājñavalkya, Verse 272

- "A village, however, should pay (when) within its own limits, or that
- 30 where the foot (mark) has reached. When beyond a *kośa*, five of the surrounding villages, or even ten villages also.

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Mitākṣharā:—Moreover, when however, a theft &c., occurs outside a village, but in a field which is on the outskirts of its boundary limits, then the inhabitants of that village alone should pay, if the foot-mark

of the thief has not emerged out beyond the boundary limit. When, however, it has emerged out, that village whereinto the foot-marks of the thief enter, shall alone make over the thief and do other acts.

When, however, any one is killed or robbed midway between several towns, and in a place which is more than a *krośa*¹ outside (each of them), and foot-marks of the thief have also been lost on account of the pressure of the crowd, then in such a case five villages i. e. the five villages together, or ten villages i. e. the ten villages together, should pay. The optional clause is used to indicate that as much should be done as would bring about a restoration of the property stolen &c, from the villages contiguous to the place. 5 10

When, however, the king is not able to cause property stolen elsewhere to be restored, then he should indeed pay from his own treasury, *vide* the text of Gautama:² "Having recovered property 'stolen by thieves, he shall return it to the owner, or he shall pay out 'of his own treasury." 15

In case of a doubt as to whether property was stolen or not, the decision should be made by means of human proof or by ordeal, as has been laid down by Viddha-Manu: "If, while the property 'is being caused to be restored, a doubt arises as to a theft (having 'taken place), the person robbed should be put to an oath, or he may 'establish (his case) by (the evidence of) his relatives." 20

Vīramitrodaya

Yājñavalkya. Verses 271-72

In the case of manslaughter, or theft of property, or robbery etc. the fault is of the headman of the village for conniving at a thief; therefore the village, its master, should restore back property which has been lost within his territory, if the foot-prints of the thief do not emerge out of the village. If, however, they emerge out then wherever they are traced as entering, the master of that territory should give. On the pasture-ground for the grazing of the cattle etc, the responsibility for assault or robbery is of the owner. At a place other than the pasture ground the responsibility 25 30

1. i. e. two English miles,

2. Ch. X. 46-47.

3. i. e. when the thieves are not traced, or having been traced have vanished, then the king should pay from his own treasury. Hiraḍatta.

for assault, robbery etc. is of the patrol of the road in regard to the tracing of the theft. The half of the verse beginning with 'within its limits etc.' is also connected with this. If, however, an assault or a robbery occur at a place intervening between several villages, and the
 5 foot-prints also are obliterated by the pressure of the crowd etc. then the people of the five villages, or of ten villages collectively, should pay.

The word *atha vā* 'or, even' is used as indicative of neglect. Thus the result is that those who are in the neighbourhood of a *ārośa* should pay. In some books for *ārośāt* the reading is *brāhṛāt*,
 10 'from the cultivated land.' By the first use of the word *tu* is excluded the responsibility beyond the territory.

When, however, the king is not able to compel the restoration from others of the property stolen, then the king himself should pay what was stolen by the thief. Since Gautama¹ has observed: "Having
 15 "recovered property stolen by thieves he shall return it to the owner, "or he shall pay out of his own treasury" (271-72).

Śūlapāṇi

Yājñavalkya, Verse 272

What is lost within one's boundary, the village itself should pay; or
 20 where the foot-marks emerge out of a cultivated place and elsewhere, what is stolen away, the men of five villages together should give by regard to the contiguity, or men of ten villages is the optional rule (272).

The Author mentions a special penalty in cases of particular offences
 Yājñavalkya, Verse 273

25 The King shall cause to be impaled on a stake *Bandigrāhas*, likewise the stealers of horses and elephants, as also those who commit murders with violence.

Mitākṣharāḥ:—The king should cause to be impaled on a stake the *Bandigrāhas*² and like others, or also men who commit murders accom-
 30 panied with violence and force. This, moreover, is a rule regarding only one kind of corporal punishment, *vide* the text of Manu³: "Those who "break into a (royal) storehouse, an armoury, or a temple, and those "who steal elephants, horses, or chariots, he shall indeed slay without "hesitation."

1. Ch. X. 46-47

2. *Bandigrāhas* are those persons who forcibly take or carry away others as prisoners.

3. Ch. IX. 280.

Śūlapāṇi

Yājñavalkya, Verse 273

Those desperados, who regardless of life, and with the object of (extracting) money, carry wealthy persons as prisoners, these, as also those who steal elephants and horses, similarly those who kill with violence, all these the king should impale on stakes (273). 5

Yājñavalkya, Verse 274

The pick-pockets and cut-purses should be deprived of the tongs of their hands; for a second offence, they should be deprived of a hand or a foot.

Mitākṣharā—Moreover, he who throws up the clothes or other things i. e. carries them away is *utkṣhepakah*, a *pick-pocket*. He who carries away gold or other things tied in a cloth &c. either by loosening or cutting (the knot) is *granthi-bhedakah*, a *cut-purse*. These two respectively should have the forefinger and the thumb resembling a tongs removed from their hands. 10 15

Dvitiyāparārdhe, on a second offence, moreover, a hand and a foot (joined together make up the compound expression) 'a hand and a foot.' That and each one of these, is 'a hand and a foot.' Those two should each have 'a hand or a foot' taken away from them i. e. of the pick-pocket and the cut-purse a hand and a foot should be cut off from each. This is the meaning. 20

This also has a reference to articles which bring on the highest Śāhasa, since Nārada¹ has observed. "The amputation of that limb (with which the crime had been committed) is declared to be the punishment for a Śāhasa of the highest degree." 25

For a third offence, however, death alone (is the punishment). So Manu² (says): "On the first conviction he should cause two fingers of a cut-purse to be cut off; on the second, a hand and a foot; on the third, he deserves death." 30

The meaning is, the punishment should be determined upon by regard to the caste and the amount of property, as also the value &c.

Śūlapāṇi

Yājñavalkya, Verse 274

One who robs by lifting is a lifter. One who steals gold etc. tied in a cloth by breaking open the knot is a cut-purse. These two for a first offence should be deprived of the thumb and the first finger of the hand; for a second offence, should have their one hand and foot lopped off, and for the third offence these should be sentenced to death. As Manu² has stated: "For the third he incurs a capital punishment" (274). 35

As it is impossible to lay down several punishments in regard to each kind of property, having regard to the fact that the causes for a heavy or light punishment are innumerable, viz. the caste, the amount of the property, the relation, or the appropriation and disposal (of the same), as also the age, capacity, the qualities, the country, the time, and such other causes; the Author mentions a general rule for determining a punishment

Yājñavalkya, Verse 275

In the case of the theft of inferior, middling, and superior articles, the fine shall be according to the value. In passing sentence, the place, the time, the age and the capacity should be taken into consideration.

Mitākṣharā:—In the case of a *theft*, *harāṇe*, of articles of inferior, middling, as also of superior quality, the punishment should be determined *sārato*, according to the value, i. e. the price (of the article &c.). The nature of an article of an inferior or other quality has been mentioned by Nārada¹: "Earthenware,—a seat, a couch, bone, wood, leather, grass, and the like, leguminous² grain, and prepared food, these are instances of articles of small value (14). Clothes other than those made of silk, and likewise cattle other than cows, and metals other than gold, are articles of middling value, as also are rice and barley (15). Gold, jewels, a silken cloth, a woman, a man, a cow, an elephant, and a horse, and the property belonging to a god, a Brāhmaṇa, or a king, must be understood as articles of superior value (16)."

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The same Author³ has pointed out a rule of punishment in terms of a *Sūtrasa* of the inferior, middling, or superior quality in the case of articles of three classes, derived from the general rule: "That series of punishments which has been ordained by the wise for the three kinds of *Sūtrasas* is equally applicable even to theft regarding articles of the three classes respectively." In the case of a jewel or a pot which is made of earth, or of cattle other than cows and horses, such as a buffalo, a ram, and the like, and also gold, grain &c., belonging to a Brāhmaṇa, there is a rule of differentiation as to higher or lower quality

1. Ch. XIV. 11-16.

2. *Samiddhāṇṇa*—is any pulse or grain growing in pods; a leguminous grain.

3. Ch. XIV. 21. Gaṇṭama Ch. XII, 15-17.

and thus when it is desired to determine upon a higher or a lower form of punishment, it should be done by regard to the price &c.

There, moreover, *dandakarmaṇi*, in passing sentence, for fixing upon a particular punishment, the country, the time, and the age (of the offender) &c., should be carefully taken into consideration, as the determining causes thereof. These, moreover, also imply the (consideration as to) the caste, the size of the (particular) article, and (the extent of) the appropriation, or like other matters. Moreover¹:
 "The guilt of a *S'ūdra* in the case of a theft is eight-fold; and twice that and higher still will be the punishment in each higher caste, and
 "in cases of offences by the learned the punishment shall be very much
 "increased." The meaning is this: By the word 'guilt' (used) here, the punishment is intended. Whatever punishment has been prescribed for a particular theft, the same should be administered eight-fold in the case of theft by a learned *S'ūdra*. In the case of learned men of other
 castes, moreover, *e. g.* of the *Vaiśya*, *Kṣatriya* or *Brāhmaṇa* castes, the guilt is two-fold and higher up *i. e.* sixteen, thirty-two, and sixty-four² times the amount; since there is a higher punishment for a theft committed by a learned *S'ūdra*.

The same meaning has been brought out by *Manu*³ also: "In (a case of) theft the guilt of a *S'ūdra* is eight-fold, sixteen times, that of a *Vaiśya*, and thirty-two times in the case of a *Kṣatriya* (337). That of a *Brāhmaṇa* sixty-four-fold; or quite fully a hundred, or (even) twice four-and-sixty fold; (each of them) knowing the nature of the offence (338)."

Similarly, a higher punishment is also determined by the consequences (of the offence). As says *Manu*⁴: "Of him who steals more than ten *Kumbhas* of grain, corporal punishment (shall be inflicted); in other cases he shall be fined eleven times as much, and shall be made to pay the property⁵ (to the owner)." A *Kumbha* is equal to twenty *Dronas*.

1 *Bālaśaṅkara* assigns this text to *Vasiṣṭha*, but it is not found in the *Dharmasūtras* of that author.

2 There is a mistake in the print of the text here (p. 148 l. 12)

Instead of *चोदयति* read *चोदयति* or *चोदयति*.

3 Ch. VIII. 337-338

4 Ch. VIII. 320.

5. or its value.

- The punishments of beating, deprivation of a limb, or death, to be declared against the thief should be determined upon by regard to the qualities of the owner robbed, as also to the time being plentiful of harvests, or of famine. Moreover, in the case of precious jewels and like articles, there is a particular punishment even by regard to the particular number (stolen): "A¹ corporal punishment shall be inflicted in the case of a theft of more than a hundred of articles made of gold, silver (or other like metal), and of most excellent clothes; as also of (a theft) of all kinds of jewels. For (stealing) more than fifty, the (punishment of) cutting off of the hands is intended; in other cases, a fine eleven times the price (of the article stolen) should be fixed." Likewise, from (the quality of) the particular article also: "For² stealing away men of noble family, and especially women, and precious gems of all kinds, he deserves (the punishment of) death." For stealing away men not of a high family, however, there is a different punishment: "The³ punishment for one who steals away a man, is the highest amercement; in the case, however, of a like offence against a woman, he shall be deprived of his entire property; and a corporal punishment for one who steals a maiden." In the case of articles of trifling value, however, *vide* the text of Nārada: "In the case of articles of a value less than a *māṣa* a fine five times the price of the article shall be imposed. For stealing wood, a pot grass and the like, as also articles made of clay, bamboo, and vessels made of bamboo⁴; muscles, bones and hides. For stealing vegetables with green roots, and fruits and roots, preparations of cow-milk, and of the sugar-cane, and salt or oil. Cooked food, (specially) prepared food; fish, flesh; and every sort of object of (any) value, a fine five times the value (shall be the punishment)."
- 30 A punishment, however, which in the cases of articles of small value is less than a hundred, or limited by fifty, the same should be adequately adjusted in (the case of thefts of) articles of the value of a *Māṣa* or of a higher value. The text of Manu⁵, moreover,

1. See Manu Ch. VIII. 321-322. Bālabhāṭṭa assigns this text to Nārada.

2. Ch. VIII. 323. 3. Nārada: Appendix 28. 4. Appendix 22-24.

5. The reading in Nārada is *ṛṣṣu*—'of rattan.' 6. Ch. VIII. 329.

applicable to trifling articles, viz: "the fine shall be twice the value of the article," has a reference to articles of a very small value *e. g.* an earthen pot or the like. Moreover, there is an excess of punishment also on account of an aggravation of the offence: "The king should cut off the hands of those thieves who make
 PAGE 149* "holes in the walls and commit thefts at night, and
 "shall impale them on a pointed stake." Thus all these are innumerable, and cannot be specifically mentioned in regard to each article, and so a lower or higher form of punishment should be determined by regard to the several circumstances such as the caste, the quality and the quantity (of the subject matter), and like others.

Of travellers, however, there is no punishment for slight infringements, as says Manu: "A twice-born (man) who is travelling and whose provisions are exhausted, shall not be fined, if he takes a couple of stalks of sugar-cane, or a couple of roots from the field of another man." Also: "Of gram, rice, wheat, barley, millet, and bean, a handful may be taken by those who are on their way in a journey, if not prohibited. Likewise, he who has not eaten at six meals, may take at the seventh meal from a man who neglects his sacred duties, without (however) making a provision for the morrow."

Sūlapāṇi

Yājñavalkya, Verse 275

For stealing articles of low, middling, and highest qualities, such as fuel, pots, salt, jaggree, camphor, saffron etc. the punishment should be administered by taking into consideration the original price, the place, and the time of the robbery in determining the penalty in passing sentence (275)

The Author mentions a punishment even for one who is not himself a thief, but who helps a thief

Yājñavalkya, Verse 276

To him who knowingly supplies food, lodging, fire, water, counsel, implements, and expenses, to a thief or a murderer, the punishment shall be the highest.

1. Author not known. 2. Ch. VIII. 341. 3. Ch. XI. 16.

4. *i. e.* when a man has been compelled to fast for three successive days and three nights, he may (even) steal, but only from one who does not answer the responsibilities enjoined by the Śāstras, and, the theft also should not be with a view to store up provisions, not even for the morrow, but simply to satisfy the hunger so keenly felt.

- Mitākṣharā:—*Bhaktam*, food, for eating; *avakāśo*, lodging, i.e. a resting place; *agnih*, fire, for removing the cold of the thief; *udakam*, water, for one thirsty; *mantrah*, counsel, i. e. advice in the matter of a theft; *upakaraṇam*, implement, i. e. the means for committing a theft; *wyayah*, expenses, i. e. in the journey of one going out to another region for committing a theft. He who offers these *chaurasya*, to a thief, *hantur wā*, or to a murderer, *jānannapī*, even (after) knowing him, (to be such), for him the punishment shall be the highest amercement.

- A blame attaches even to those who tolerate a thief, since Nārada¹ has said: "Or those who neglect² them though able (to arrest), "partake of (the responsibility of) their crime themselves."

Śūlapāṇī

Now an extension of the (rules regarding the) thieves

Yājñavalkya, Verse 276

- Bhaktam*, 'food', i.e. for eating; 'lodging', a resting place; fire for relieving cold, water, for one thirsty; counsel, i. e. advice; implements, the means for committing a theft; expenses, i. e. in a journey of one going out to another region for committing theft; he who deliberately gives these to a thief or to a homicide, for him the penalty shall be the highest amercement. Kātyāyana says: "Those who purchase articles, as also those who accept as donations, all these are equally punishable, as also those who conceal them" (276).

Yājñavalkya, Verse 277

- For giving a blow with a weapon, and also for causing an abortion, the punishment is the highest; for the killing of a man or a woman the punishment may be the highest or the lowest.

- Mitākṣharā:—*Śastrāvapātane*, for giving a blow with a weapon, on the limbs of another, and *garbhasya pātane*, for causing abortion, in cases other than that of a female slave or of a Brāhmana, the punishment i. e. the penalty shall be the highest. For causing the abortion of a female slave, however, a fine of a hundred has been mentioned (in the

1. Ch. XIV, 10.

2. अज्ञेय—Is forbearance or neglect, connivance. The meaning here is that those men who exhibit a kind of passiveness regarding criminals, even when they have the capacity to arrest them, knowing them to be such, render themselves responsible as accomplices.

text¹) "One who destroys the foetus of a female slave. As for the foetus of a Brāhmana, the Author will mention an extension of the rule in² "One who destroys a foetus unknowingly &c" And for the murder of a man or a woman the highest or the lowest punishment must be understood as laid down, having regard to the character, mode of living, and such other circumstances (regarding the deceased) 3

Śūlapāni

Yājñavalkya, Verse 277

For destroying a womb by striking a weapon the punishment is the highest (amerceement) For killing a superior man or woman, the highest, 10
and for murdering a lower man or woman, the lowest amerceement (277)

Yājñavalkya, Verse 278

A woman who is superlatively wicked, who destroys males, who breaks reservoirs, shall, if not pregnant, be plunged into water after a stone being tied 15

Mitāksharā — Moreover, one who is extremely wicked is *vipradushtā*, a superlatively wicked woman, e.g. one who causes the destruction of a child in the embryo, also who causes herself to miscarry, as also she who kills a man, and one who breaks reservoirs. These women, if not pregnant, should be plunged into water, after tying a stone round 20
their neck, so that they may not swim up

Śūlapāni

Yājñavalkya Verse 278

A woman who is superlatively wicked & who is an adulteress, as also a man who destroys an embankment, should have a stone tied to them and be immersed in water, the woman, also if she be not pregnant (278) 25

Yājñavalkya, Verse 279

One who administers poison, or sets fire or kills her husband, preceptor or her own child, shall be deprived of her ears, hands nose and lips and be caused to be killed by bullocks 30

1 II 230 see p. 1281 J 9 above

2 Visveśvara and Rajambhāja both say it is in the *Iravatschittidhyaya*, but it is not to be found there. It is probably a reference to Verse 280 following hereafter

- Mitāksharâ — Moreover, (here again) one who is not pregnant is understood. She also who administers : e puts poison into the food drink &c with the object of killing others, she again, who sets fire to a village &c that it may be burnt, likewise, one who causes her own husband preceptor, or children to be killed such a one should have her ears, hands, nose and lips cut off, and herself caused to be killed by means of wild and untamed bulls

This statement of a rule regarding a Śhasika and made in the chapter on theft should be understood to be made incidentally

10

Vīramitrodaya

While treating particularly of (the law of) theft, the Author mentions penalties for similar offences

Yājñavalkya Verses 272-279

- Those who imprison moneyed men and keep them are (called) *Bandīgrāhas* (men lifters), also those who steal horses or elephants, and those who forcibly kill men, such thieves the king should impale on spikes as (for) a capital punishment (273)

- One stealing clothes after lifting them, is also stealing gold etc. tied in a cloth after untying the knot, should be deprived of the forefinger and the thumb, and on a second offence of pick pocketing, the king should deprive them either of a foot or a hand (274)

For stealing articles of low, middling, or high value, the punishment should be administered by regard to the value of the article equal to its price.

- In the matter of determining the punishment, the country and other circumstances also should be taken into consideration by the king. There, says Nārada¹ "Earthen pots, bed stands, bones, wood, hide, grass, and the like, as also leguminous grains and cooked food" are known as articles of low value. Clothes excepting silken ones, as also beasts excepting cow, and metals excepting gold, are articles of middling value, as also are paddy and barley. Gold, jewels, silken articles, women men, cow, elephants, horses and articles belonging to the deity and the Brāhmanas should be regarded as articles of the highest value

- By the use of the word *tathā*, 'also', is included the addition of the king. The word *mahādṛavya* used here after discriminates

such elephants, horses as belong to the king By the first use of the word *cha* are included those who destroy the chariots, by the second use of the word *cha* are included those who break through a fire place etc *vide* the text of Manu¹ "Those who break through the building containing fire or weapons or the temples of Gods, as also those 5
 "who destroy the elephants, the horses and chariots, the king should 'certainly, chastise without hesitation By the use of the word *eva*, 'certainly', is excluded any monetary penalty Manu² has observed "By reason of having acquired money by unjust means, their property 10
 "has a taint in it therefore the king should punish them corporally "and should not inflict (merely) a monetary punishment (275)

For him who offers food, place for residence, or fire for relieving cold, or offering fire, water etc which would relieve cold, or instruments for stealing or killing such as a sword, or expenses for 15
 the journey over travelling to distant countries, or any of these to a thief of gold etc or to a homicide or the like, even though not knowing him as a thief, for such a one although not a thief, the highest : *e* the one equal for a thief, alone is the punishment in conformity with the following text of Narada "Those who invite or 20
 "those who give counsel or offer an asylum, all these are regarded as "equally amenable to punishment, as also those who conceal them
 "Those who give food or tunc, as also those who neglect running after "thieves when they have capacity, these also are guilty of that offence
 When the king is not able to ward off thieves, one offering food etc 25
 to a thief in the interest of self protection is not guilty, *vide* this text of Vishnu³ "Except when the king is unable (276)

For striking the body of another with a weapon, and for bringing about an abortion excepting in the case of a foetus of a female slave, or of a Brahmana, the penalty is the highest amercement for destroying *i.e* 30
 killing the wives of particular persons such as characterized by their being Brahmanas, the penalty shall be the highest or the lowest amercement *Wd*, 'or the option (indicated here) is (to be exercised) by regard to the general behaviour and character By the use of the word *ap* : *i.e* 'also, in the case of others than those known by their behaviour and 35
 character, the penalty shall be the middling amercement By the use of the word *cha*, having regard to the text of Vishnu⁴ 'He who steals

1 See Ch IX 280

2 Not found in Manu

3 Ch XIV 10

4 Ch V 17 5 Ch V 87

"gems (shall pay) the highest amercement is included the theft of a not valuable jewel (277)

A woman who is superlatively wicked, who kills the foetus i.e. causes her own abortion, who destroys males, as also one who breaks reservoirs, should be plunged into water after a stone being tied to her neck, provided they are not pregnant By the first use of *cha* are included males who are poisoners or incendiaries By the second use of the *cha* are included acts stated in the text of Sankha viz "For
10 'breaking open a well, a reservoir, a tank used for drinking water, or
'for polluting liquid things, as also for offering a non slave woman
'to a slave (278)

A woman who is a poisoner or incendiary, or who brings about the death of the husband the father etc, or of the child, should be deprived of her ear, nose and lips, and be caused to be killed by a bull (273-79)

15

Sulapant

Yājñavalkya Verse 279

The poisoner and the incendiary as well as a woman who murders her husband and others should have their ears hands nose and the lip lopped off and be caused to be destroyed by sharp horned cows (279)

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20 Where a murder has been committed and the murderer is not known, the Author mentions the means of detecting the murderer

Yājñavalkya, Verse 280

Of one who is killed by an unknown (person) the sons and relations should be immediately questioned as regards any quarrel as also separately
25 such women of his as were in love with other men

Mitāksharā — Of one who has been killed by an unknown individual the son* and all near relations *kalahamāsu prashjavyah should immediately be questioned as regards any quarrel* thus With whom had he had a quarrel '1 Likewise such women belonging to the deceased, and who
30 were in love with other men i.e. were adulterous, should also be questioned

Sûlapâni

Yājñavalkya, Verse 280

Of one who has been killed by an unknown person the sons and relatives should immediately be questioned by the king's officers about any previous quarrel. Also his women in love with other men should each be questioned separately (280)

How should they be questioned? So the Author says

Yājñavalkya, Verse 281

"Was he fond of women wealth or a vriti?" or "With whom did he go?" Or, (the king) may minutely make inquiries of the people living in the vicinity of the place of murder 10

Mitâksharâ — Was he fond of women? 'Had he a greed for money?' or 'Had he a desire to earn a livelihood?' or thus 'For what woman had he a fondness and how is she connected?' 'For which wealth had he a fondness?' or 'Whence did he think of securing his livelihood?' or 'With whom did he go to another country?' Thus in various ways should his adulterous women be separately questioned after giving them assurances 15

Likewise, such men *e g* the cowherds foresters and others as were in the neighbourhood of the place of murder should also be questioned in confidence. Thus after determining upon the murderer by several means such as these, a punishment adequate for him may be declared 20

Varāmitrodaya

In the text In the case of murder or theft &c murder is stated by way of illustration there how can it be determined that he is a murderer? Anticipating this in the context the Author suggests an answer 25

Yājñavalkya Verses 280 & 281

Where a person is killed and it is not known by what particular individual he was killed there his sons and relations should immediately be questioned thus 'with whom had he a quarrel?' with a view to (solve) the doubt regarding the escape of the thief his women such as wife sister etc 'With which other persons were they in love?' should each be separately questioned so as to avoid non disclosure through shyness in the presence of each other (280) 30

And his sons and relations should be asked whether he was fond of women, or of money, or of employment, and with whom he had gone. In the absence of sons, relations, and others, persons in the vicinity of (the place of) death such as the cow-herd and the forester, he should question after creating confidence. By the use of the word *cha*, 'also', the Author includes the question such as 'with whose wife was he in love'? By the use of the word *api*, 'also', is included the suggestion that even without a question one should find out a trace of enmity (280-81).

Śūlapāṇi

10 Yājñavalkya, Verse 281

The investigating officer of the state should slowly and persistently question the people of the locality as to whether he was addicted to women, was covetous of wealth, or was looking out for a living, as also with whom he had gone, or the woman also, whose was she and the like. Brihaspati¹ says: "Where a corpse is found, but the murderer cannot be discovered, the king shall trace him by drawing an inference from previous enemies of his" (281).

Yājñavalkya, Verse 282

20 Those who set fire to a field, a house, a forest, a village, a pasture-ground or a threshing floor, likewise he who carnally knows the wives of the king, shall be burnt in a fire of grass.

Mitākṣharā—Moreover, those who set fire to *kṣhetram*, a field, in which the fruits and the crops have ripened. *Weśma* means a house; *vanam*, a forest i.e. a wild forest or a pleasure forest; village; *vivītam*, a pasture ground has² been explained; or *khalam*, a threshing floor, as also he who has carnal intercourse with a wife of the king; all these should be covered with the *varapa*³ grass, and burnt. This punishment has been mentioned here, as it is incidental to the punishment of death, (which accrues) to the incendiaries of fields &c.

30 Thus ends the Chapter on Theft.

1. Ch XXII. 34.
2. See Yājñ II. 160 (2) and the Mitākṣharā thereon p. 1171. II 17-18 above.
3. Straw—a kind of grass at the root of which is found the fragrant *dhans* or धान. See Amara II. 4. 164.—the *Andropogon Muricatus*.

Vīramitrodaya

Now on the occasion of mentioning the penalties for theft and (causing) death, the Author states the penalties for a like offence

Yājñavalkya, Verse 282

The persons setting fire to any one of the six things such as a field 5
and the rest, as also those having sexual intercourse with the wife of
the king, should be covered with the *urana* grass and burnt in its fire
By the use of the word *cha* are included those stated by *Manu*¹ in the
text viz "He who destroys a rampart (of a town), or fills up the ditch, or
"who breaks through the (town) gates, should be immediately killed" 10
By the use of the word *tu*, however, the Author excludes its destruction
by any other means, as says Kātyāyana "Either through a desire for
"securing a friend, or earning wealth, one wishing the welfare of the
"king and the people should never let off desperados who are a danger
"to all beings The king who either through covetousness or through 15
"fear does not destroy sinners, there a commotion springs up in his
"territory and he is deprived of (his) kingdom

Nārada² "This law of punishment has been generally stated for all,
"excepting corporal punishment for a Brahmana, a Brahmana should not
"be killed, in his case the punishment is shaving of the head, banishment 20
"from the town with a brand mark of a culprit on the forehead and a
"parade on a donkey Yama "Never shall at any place be corporal
"punishment for a Brahmana, he should be kept in prison under restraint,
"and the king should give him food, or he should be tied with a rope, and
"the king should compel him to do labour for a month or half a month 25
"Taking into consideration the real subject matter, having regard to the
"offence, a Brahmana may be compelled to perform works forbidden
"(for him) "

Other punishments are passed over through fear of prolixity.

Here ends in the commentary on Yājñavalkya a 30
the Chapter on Theft

Sulapāni

Yājñavalkya Verse 282

Those who set fire to a field etc, those who have intercourse with
the king's wives should be burnt on a pile of fire, the pile made of *urana* 35
or other grass (282)

Here ends the Chapter on Theft.

CHAPTER XXIV

On Adultery with women

- The Chapter of Law called 'Adultery' is being now propounded. With a view to adjustment with the punishments for the lowest and other *Sūtras* a threefold division of the same has been specified by Vyâsa. "That has been designated as of three kinds the lowest, the middlemost, and the highest. Conversation with another's wife in an improper place, or at an improper time, or in a solitary place, throwing side long glances at each other, and (exchanging) smiles is known as the lowest *Sūhāsa*. Sending fragrant scents and flowers, odours ornaments, clothes, and causing allurements by food and drink, is known as the middlemost *Sāhāsa*. Sitting together in the same seat in a solitary place, with mutual contact as also pulling each other's hair, is known as a complete act of 'adultery'." *Sangrahanam*, adultery is the (carusl) union of a man and a woman.

As the detection of adultery is necessary for the punishment of one who commits it the Author mentions the means of detecting the same.

Yājñavalkya Verse 233

- A man should be caught in the very act of adultery with another's wife, or while holding each other's hairs or by other signs of excitement or lust, also by the admissions of both.

Pāṇi 151*

- Mitaksharâ**—A man should be detected as intent on adultery by the knowledge derived from the signs of holding each other's hairs and the like. *Kesakesu* holding each other's hairs is the (particular kind of) pastime in which each holds the other's hairs. Under the rule of grammar

1. अत्र त्वेवम् । *Amni* II 2 27 The rule means this. When two homonymic words both being in the locative case (अत्र) or both being in the instrumental case (तस्मै) are compounded the suffix being—thus happens therein with that the compound so formed is *Dah* (वह्नि).

The locative case is used when the sense is that of searing and the instrumental when the sense is that of striking. In the example here अत्र अत्र त्वेवम् अत्र अत्र त्वेवम्—तस्मै तस्मै अत्र त्वेवम्. The same would be the form when two combatants hold each other's hair in a duel. An example of the instrumental is त्वेवम् त्वेवम् अत्र त्वेवम्.

"Two homonymous words coming together indicating this happens
"therewith or with that a Bahuvrīhi compound is formed" and under
another rule 11. "The affix *ich* (इ) comes after a Bahuvrīhi when
"the compound denotes a reciprocity of action the affix *ich* is added
at the end of the compound. And as it is in an adverbial form, the
instrumental case is silent. Therefore the meaning is thus [From
his amusing himself with another's wife when both hold each other's
hair, or from the fresh signs of amorous intercourse, such as the marks
created by the nails of the hands, or by the teeth and the like, or by
the admission (of the fact) by both, (thus) having known him to have
attempted to commit adultery, he should be arrested. The use of
the expression 'another's wife' is with a view to exclude a woman
who has been appointed (to beget issue), or a protected female slave.

Śūlapāni

Yājñavalkya, Verse 283

In regard to adultery: intercourse with other's women one may be
apprehended while they mutually grasp each other's hair or by marks of
amorous contact such as the scars by the nail or teeth or by the ad-
mission of the woman or the man (283)

Yājñavalkya, Verse 284

Touching the knot of the lower garment, the breasts the upper
garments, thighs, and the hair, holding conversation at an improper
place and time as also sitting together on one seat

Mitākṣharā —Moreover, he again, who behaves as if with a lustful
desire towards another's wife by touching the part (of her body)
bearing the knot of the (lower) garment, or the garment covering
her breasts, or the lower parts of her body or the hair of her head,
likewise, he who holds conversation with her at an improper place,
adeśa: e in a place which is lonely or where crowds of people have

1 Panini V 4—127 इङ्गत्प्रत्ययस्य

2 The whole formation is based on five rules of grammar viz the two
mentioned above and three more viz Panini VI 3—137 अङ्गत्प्रत्ययस्य इङ्गत्प्रत्ययस्य under
which the vowel at the end of the first member is elongated (इङ्गत्प्रत्ययस्य) the adverb-
ial compound has a support from Panini II 1—17 निरनुपसर्गस्य and the dropping
or elision of the instrumental is accounted for by Panini II 4 82 अङ्गत्प्रत्ययस्य See
Rajambhatta

3 e under a Niyoga or appointment to beget an issue

gathered together, or which is obscured by darkness, or who closets himself with another's wife on one sofa or any other like seat, as if intent on having carnal intercourse with her, such a one should be arrested as one who had attempted to commit adultery

- 5 This rule, however, applies to a man about whom there is a suspicion as to an offence. Of any other, however, there is no guilt, as says *Manu*¹ "That man however, not before accused, who holds conversation for some (good) reason, shall not incur any guilt, since in him there is no transgression." It has been said by the same
- 10 *Author*², that he who forbears when touched by another's wife, such a one also may be apprehended. "He who touches a woman at an improper place, or forbears when (himself) touched, all that is considered as adulterous intercourse with mutual consent." It has been said by the *Same sage*³ that he, moreover, who boastfully declares
- 15 before a company of gallants thus "I have enjoyed this charming accomplished woman times out of number"—such a one also may be apprehended. "When a man, actuated by vanity, folly, or braggardism declares himself that he has enjoyed (the love of) a certain woman, that is also regarded as (constituting) an offence of adultery."

20

Vīramitrodaya

- Now on the occasion of treating an intercourse with the wife of the king the *Author* begins the title of law known as 'Adultery with Women, which has been split into three varieties by *Vyāsa* in the following manner "That has been designated as of three kinds, the lowest, the mid
- 25 "die and the highest. Conversations with another's wife in an improper (or lonely) place, throwing sidelong glances at each other, and (exchanging) smiles is known as the first kind of adultery. Sending fragrant scents and flowers, odours, ornaments, and clothes, and causing allure-ment by food and drink is known as the middlemost. Sitting together
- 30 "in the seat in a solitary place, mutually reclining against each other, as also pulling each other's hair is known as a complete act of adultery."

There, first the *Author* mentions the means by which adultery developing into sexual intercourse may be known.

¹ Ch VIII 35.

² Ch VIII 35.

³ Not found in *Manu*. The text, however, is to be found in *Narada Ch XII 69*.

Yājñavalkya Verses 283-84

Kesakesi, 'pulling each other's hair, : e pulling the braids of each other's hair or of the knot of the waist cloth at an improper place and time : e such as in a solitary place and at midnight or the like, having conversation and sitting together, in this manner a man may be apprehended as having had adultery with sexual intercourse with another's wife, that should be determined by the capacity for intercourse. It should be immediately apprehended by signs, the result of amour, such as the nail-scars etc. And also by the admissions of both the woman and the man as having a desire for sexual intercourse (283) 5

Nat, 'knot, : e the knot of the wearing apparel, the covering of the breast : e the tying cloth, as also hair on the thighs, the touching of these. By the use of the word *cha*, 'and', is added the sending of fragrant scents, flowers etc. By the use of the word *eva* 'also', is discriminated suspicion 10

Śūlapāni

Yājñavalkya Verse 284

One pulling at the garment knot should be apprehended for adultery. The rest is clear. Brhaspati¹ mentions the distinctions in this 'Casting a sidelong glance smiling at her, similarly sending a female messenger, touching her ornaments or clothes is termed an adulterous act of the 'first degree etc' (Same as in Viramītrodaya citing *Ydgz* p 1342 124-32) 20

The Author mentions a penalty for a man and a woman who, having been once prohibited, again hold conversation or do like acts

Yājñavalkya, Verse 285

A woman being forbidden shall pay a hundred, while a man two hundred as a penalty, when the prohibition had been to both, their punishment is the same as for adultery 25

Mitkshaârâ — *Pratsbedhah* a prohibition is that where, one is prohibited e g by the husband, the father or the like. A woman who has been forbidden from holding conversation with a man and attempts to do the same (again) *satam dadyât* shall pay a hundred *panas* as penalty. A man, moreover who sets about when similarly prohibited, shall pay two hundred. When, however, both the man and the woman were prohibited, and again attempt it then the same penalty as will be hereafter mentioned for adultery : e according to the 30

Varnas (of the parties) shall be understood (for them) This rule, however, holds in cases other than those of the wives of *Chāranas*¹ and the like since *Manu*² has laid down " This rule does not apply
 5 " to the wives of *Chāranas*, nor of those who live on (the³ intrigues
 " of) their own (wives), for such men send their wives (to others)
 " or concealing themselves, allow them to hold criminal intercourse "

Viramitrodaya

The Author mentions a penalty for a man and woman holding conversation although prohibited

10 Yājñavalkya, Verse 285

When prohibited by the father and others for (holding) conversation etc and the woman herself holds conversation with the man, then a hundred *panas*, when the man himself who is prohibited (holds), then he shall pay two-hundred *panas* as the penalty When the man and
 15 the woman both are prohibited and hold conversations with each other, then the highest amercement has been laid, as in the case of adultery, likewise in the same manner should the penalty be forthem. This is the meaning By the use of the word *tu*, ' however , is excluded the prohibition of the other This rule, however, is applicable in cases
 20 other than the wives of *Charanas* etc *vide* the text of *Manu*⁴ " This
 " rule does not apply to the wives of *Chāranas*, nor of those who live on
 " (the intrigues of) their own (wives) For such men send their wives
 " (to others), or concealing themselves, allow them to hold criminal
 " intercourse " (285)

25 Sūlapāni

Yājñavalkya, Verse 285

A woman who has been prohibited by the husband or parents from holding a conversation etc and still are set on it shall pay a hundred *panas*. A man moreover, acting similarly (shall pay) two hundred For both
 30 having an intercourse although prohibited the punishment should be administered as has been prescribed *Manu*⁵ states a special rule " Beg
 " gars as also bards those who have taken a sacrificial vow, and similarly
 artists may have conversation with women without prohibition (285)

1 *Chāranas*—are actors or singers or persons of low repute maintaining themselves by mendicancy and singing &c 2 Ch VIII 362

3 अन्वित्त (*Anvitarah*) ' who maintain themselves on their own ' 3 Ch VIII 361

4 Ch VIII 352

The Author now mentions the penalty for Adultery
Yājñavalkya, Verse 286

In the case of one of the same class the highest amercement, in an Anuloma¹ (intercourse) the middle (amercement), but in a Prahoma¹, death of the man, and the lopping off of the ear and the like of the woman 5

Mitāksharā²—In the case of a man of any of the four *varnas*, a man shall be fined one thousand and eighty *panas* for having intercourse with a woman of his own caste, but who was another's wife or protected. When, however, he has intercourse with a woman of a lower order, and who is not under the protection of any one, then 10 he shall be fined in the middle amercement. When, moreover, he has intercourse with a woman of his own *varna* who was not under (any one's) protection, or with a woman of a lower *varna* who was under protection, then a special penalty has been stated by Manu³

"A Brāhmana shall be fined a thousand, when he has intercourse with 15

"a guarded *uprā* woman³ against her will, he

PAGE 152* "shall be fined five hundred when he had con-

"nexion with one who was willing (378). A

"Brāhmana shall be compelled to pay a fine of one thousand if he

"has intercourse with women of two (classes)⁴ who are under pro 20

"tection, for (a similar offence against) a *Sūdrā* woman the fine for

"a *Kshatriya* and *Vaiśya* shall be one thousand (383)."

This, moreover shall be understood to hold in the case of women other than the wives of the preceptor or a friend, since Nārada⁵ has observed: "Mother mother's sister, mother-in-law maternal-uncle's- 25

"wife father's sister the wife of a paternal-uncle, or a friend or a

"pupil sister, her friend daughter-in-law (73), daughter, spiritual

"preceptor's wife, a woman of his own *Gotra* come (to him) for

"protection the queen, a female ascetic the nurse a virtuous woman,

"and a woman who is of the highest class (74). When a man carnally 30

"knows any one out of these women, he is said to have committed

"the offence of violating⁶ the bed of a preceptor. For such a crime,

"no other punishment is ordained than the excision of the organ (76)."

1 See Acharadhyaya Chapter IV. These terms are used with reference to the man who commits the act of adultery.

2 Ch. VIII 378-383.

3 A Brāhmana woman.

4 i.e. those mentioned in Manu Ch. VIII 382. 5 Ch. XII 73-75.

6 *ṛṇā* i.e. the special kind of crime where the offence is that of knowing carnally the preceptor's wife.

In the case of a *Pratiloma* offence, *e g* intercourse with a woman of the highest class, death (is the sentence) for a male of the Kṣatriya or other (lower) class. This, however, has a reference to a guarded woman, for any other, there is a pecuniary fine, *vide* the text of Manu¹

- a "But even these two², if they offend with a Brāhmaṇa, who is guarded,
"shall be punished like a *Sūdra*, or be burnt in a fire of dry grass (377)
"If a Vaisya or a man of the Royal tribe has intercourse
"with an unguarded Brāhmaṇa let him (i.e. the king) fine the
"Vaisya five hundred, but the Kṣatriya one thousand (376)" Of
10 a *Sūdra*, moreover, having intercourse with an unguarded woman of the highest class, the punishments are the excision of the organ, and confiscation of the entire property, and of him having intercourse with a guarded woman (of a like description), the sentence is death and confiscation of the entire property, as has been stated by the same Sage³
13 "A *Sūdra* having intercourse with a woman of a twice born class—
"whether guarded or unguarded—if unguarded, he loses the organ,
"and all his property if guarded, everything (even his life)"

- Of a woman, however, having intercourse with a man of a lower tribe, the ears—and by the use of the word *Adi*, 'and the like,'—the
20 nose, should be lopped off. For one having intercourse with a man of a superior or equal tribe, a fine should be ordered

- This rule regarding the sentence of death &c, is (intended) only for the king, he alone having the right to govern, and not for every twice born individual. For such a one the holding of a weapon
25 having been prohibited by the text⁴ 'A Brāhmaṇa should not take
'up a weapon even for inspecting (it)'

1 Ch VIII 377, 378

2 i.e. the Vaisya and Kṣatriya referred to in VIII 376

3 Ch VIII 374

4 Here the term used is quite general but from the text quoted next, it appears to be intended for a Brāhmaṇa

5 The Author of this text is not known. Balamhātta, assigns it to Gautama but it is not found in that book. Gautama on the other hand allows the profession of a warrior for a Brāhmaṇa when he cannot obtain his livelihood by the ways prescribed for him. See Ch VII 6. To the same effect are the texts of Manu cited next

When however, while reporting to the king delay occurs in time and there is danger of the proper procedure being thwarted then one may himself kill an adulterer and the like the taking up of arms at such a time having been permitted by the text¹ 'the "twice born men may take up arms when (the performance of) "Dharma is being obstructed', also² "By killing a desperado (intent on doing harm), the slayer incurs no guilt, whether (he does it) publicly or in secret, (for in such a case) fury recoils upon fury"

Likewise in the case of a Kshatriya or a Vaisya each having intercourse with a woman of the other class³ a fine in each case of one thousand *panas* must be understood That has been stated by Manu⁴ "If a Vaisya approaches a guarded female of the Kshatriya caste, or a Kshatriya a guarded Vaisya woman they both deserve the same punishment as in the case of an unguarded Brahmani woman"

Sûlapâni

Now the penalty for intercourse

Yājñavalkya Verse 286

For sexual intercourse with an unwilling woman of the same caste and under protection in the case of a Brâhmana and the like the penalty is the highest amercement For intercourse with the father's sister etc death only, as the Author will state⁵ further on in the third Chapter For having intercourse however, with one not under protection and of a lower order, the punishment is the middle amercement So says Manu⁶ 'For a Brâhmana having intercourse with an unprotected Kshatriyâ or a Vaisyâ woman or with a Sûdrâ the penalty shall be five hundred in the case of an *andrayâ* woman however it shall be one thousand (386) A Brâhmana should be fined one thousand for approaching these when under protection For the Kshatriya and a Vaisya approaching a Sûdrâ woman the penalty shall be one thousand (384)

For intercourse with women of higher orders in the case of Sûdras etc death (shall be the punishment) and of the women the ear nose etc should be cut off (286)

1 Of Manu Ch VIII 348

2 Manu Ch VIII 361 See page 36 li 5-6

3 See the text of Manu cited next which makes this clear

4 Ch VIII 382

5 Yajñ III 232

6 Ch VIII 386, 384

On the occasion of considering offences regarding the wives of others, the Author mentions the punishment (for an offence) regarding a maiden also

Yājñavalkya, Verse 287

5 If any one kidnap a maiden having ornaments on, he shall pay the highest amercement, and the lowest amercement in other cases, when the maiden belonged to the same *varṇa*; in the case of a maiden of a superior class, death has been ordained (as the punishment).

0 Mitākṣharā:—One kidnapping a maiden of his own class, who is about to be married, and who had been decked with ornaments, shall be punished in the highest amercement; and one kidnapping a maiden of his own tribe not approaching a marriage, (shall be fined) in the lowest amercement. For a Kṣatriya or any other carrying away a maiden of the highest tribe death alone (is the sentence). From the rule as to punishment, it also appears (to be intended to be laid down) that the girl should be taken away from her abductor and be made over to some one else.

Śūlapāṇi

Now the despoiling of a maiden

20 Yājñavalkya, Verse 287

One kidnapping for intercourse, an unwilling maiden decorated with ornaments, shall pay the highest amercement. One, however, otherwise carrying her away, the lowest amercement. That, moreover, is in the case of the women of the same caste. In the case of higher orders, however, for 25 the kidnapper death alone (shall be the punishment).

The Author mentions a penalty for taking away girls of inferior tribes

Yājñavalkya, Verse 288 (1)

1 In the case of willing maidens of inferior classes, there is no offence; 30 otherwise, however, (there is) a punishment.

Mitākṣharā:—If one carries away a maiden of an inferior tribe who is full of love (for him), then there being no offence, (there is) no punishment. Anyathā tu, otherwise however, i. e. for one kidnapping an unwilling one, the lowest amercement shall be the punishment.

The Author mentions a penalty for defiling a maiden

Yājñavalkya, Verse 288 (2)

For defiling, however, the lopping off of the hands; and for (doing) similar acts towards one of a higher class, death

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Mitākṣharā—'In the case of maidens of lower tribes' is understood. If one forcibly defiles, by nail-scars or otherwise, a maiden, who had no sexual desire, then his hand should be lopped off, when, moreover, he defiles a maiden of a like description, by penetrating into the female organ by thrusting in his fingers, then the punishment is the lopping off of the fingers, together with the fine of six hundred as stated by Manu. "But if any man through insolence forcibly comminates a maiden two of his fingers shall instantly be cut off, and he also deserves a fine of six hundred." When however, he similarly defiles as before, one having a sexual desire even then a special rule has been stated by the same. "A man of an equal class defiling a maiden having a sexual desire shall not incur the (punishment of) amputation of his fingers but shall, however be compelled to pay a fine of two hundred, as a deterrent for a (like) repetition."

When, however, a maiden herself or a sharp woman defiles another maiden, there also a special rule has been stated by the same Sage. "A maiden, who herself operates upon a maiden, for such a one the fine is of two hundred (369). But a woman who pollutes a damsel shall instantly deserve a shaving, and also the lopping off of her two fingers and likewise (the punishment) to be carried on a donkey." "Operates upon a maiden" i. e. penetrates into the female organ of a maiden.

When, however, a man has intercourse with a maiden of the highest tribe, then whether she was willing or unwilling a Kṣatriya and others shall invariably incur death vide the text of Manu. "A man of a lower tribe who has intercourse with a woman of a higher class shall deserve corporal punishment."

When one has intercourse with one of his own class who has a sexual desire, then he shall pay the maiden a fee of a pair of cows to

1 Ch VIII 367

3 Ch VIII 369-370

2 Ch VIII 368

4 Ch VIII 368

- her father; if she be unwilling, the maiden's fee to the father, and an equal (amount) as fine to the king. For one having intercourse with one of his own *varṇa* but having no desire, corporal punishment alone: as says Manu:¹ "He who has intercourse with one of an equal class, shall pay the maiden's fee to the father if he desires," also: "He who violates an unwilling maiden shall instantly suffer corporal punishment; but one defiling a maiden of an equal class who has a sexual desire, shall not suffer corporal punishment"

Śūlapāṇi

Yājñavalkya, Verse 288

- In the case of willing women of the lower order, there is no blame for having intercourse. In the case of the maidens of the same caste without an intercourse despoiling through arrogance by thrusting the finger, the cutting off of the hands. In the case of the superior women, death only (288).

Yājñavalkya, Verse 289

- For slandering a woman, a man shall pay a hundred; and two hundred for levelling a false accusation. For connexion with beasts he shall be compelled to pay a hundred; and the middling fine for connexion with a low woman or a cow.

- Mitākṣharā:—Moreover, having regard to the context, a maiden is intended here by the word 'woman'. If any person utters a slander concerning such a one *viz.* by declaring defects in her, such as the diseases of epilepsy, pulmonary consumption, and the like complaints of long standing, and of a bad type, even if they be (*i. e.*) existing (in her); or of having had mixed intercourse, and thus slander her saying 'She is not a maiden', such a one shall be compelled to pay a hundred. Mithyābhīṣaṁsane tu, for a false accusation however, *i. e.* for declaring defects in her, which (in fact) did not exist, he shall be compelled to pay two hundred. For connexion with beasts excepting a cow, he should be compelled to pay a hundred. He, moreover, who has connexion with a *hīṇām striyam*, *low woman, i. e.* a woman who has intercourse with low people—and since there is no particularisation, whether she be willing or unwilling;—or one who has connexion with a cow, such a one shall be punished with the middlemost amercement.

Śūlapāṇi

Yājñavalkya, Verse 289

- On an occasion of a marriage of a woman one maintaining an existing defect should be compelled to pay a hundred. For a mention of a non-existing one he shall be compelled to pay ten hundred (289).

The Author mentions a penalty for having intercourse with a common woman

Yājñavalkya, Verse 290

In (the case of) women who are protected (slaves of another), and likewise (of) kept mistresses, even though intercourse with them is permissible, a man shall be compelled to pay a fine of fifty *panas* 5

Mitākṣharā — 'One who has connexion', this has to be understood. The women of the *varnas* already¹ described are (considered as) slaves, these very women are prohibited by the master from intercourse with other men with an injunction to stay at home with the object of avoiding any lapse of service, these are known as *Avaruddhā*² or *protected slaves*. Women restricted in the matter of sexual intercourse to a certain person are known as *Bhujishyā* or, *kept mistresses*. When female slaves are *Avaruddhā Bhujishyā* then in their case—likewise by the use of the particle *cha*, 'and,' harlots wanton women, common women and *Bhujishyā* are also included, in their case also—*gamyāsvapi although intercourse with them is permissible*, as they are equally available to all males one having connexion with them shall be fined fifty *panas*, since they are as good as other's wives as they have been patronised by another. This has moreover, been clearly stated by Narada³ "A wanton woman one not a Brāhman, a prostitute or a female slave intercourse with these women is permissible when they belong to a lower order, but not in a higher order (78). When however, any one of these is a kept mistress of another the offence is equal to that of connexion with another's wife." 10 15 20

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'One must not approach these though intercourse with them is permissible as they are patronized by another' (79) 25

Indeed 'it is not correct to say that wanton women and the like others being common women intercourse with them is permissible. The type called 'common women' are not met with in this world either as forming any separate caste or mentioned in any *Śāstra*. For the wanton women as even the female slaves are after all women of 30

1 See Ch XIV

2 See *Nagabha* vs *Hemghā* 47 Bom 401

A kept mistress whose husband is alive is not an *avaruddhā* etc. *Samdihā* vs *Chandrabha* 48 Bom 203 3 Ch XII 78-79

4 From here commences the objection that the statement that the women referred to here are approachable by all is not proper. And for this purpose, the objector takes all the cases and examines them as (1) of the married women who have fallen off, (2) of the maidens and (3) of prostitutes

(some) *varna* vide the text of Manu¹ "That woman who abandons her (own) husband and goes to another man of her own *varna* out of love (for him) is called a *Sikurini* or a wanton woman, slavery is ordained in the descending order of the *varnas* and not in the reverse order" And in the case of women having a *varna* it is not possible for connexion with another man when the husband is living, or even when he is dead. Since a prohibition has been ordained in the text² "Though destitute of virtue, or seeking pleasure (elsewhere), or devoid of good qualities, (yet) a husband must be constantly worshipped as a god by a faithful wife (154) At her pleasure, let her emaciate her body by (living on pure) flowers, roots and fruit, but she must never even mention the name of another man after the death of her husband (157)"

Nor even can a woman be a common woman in her maiden condition For a gift is ordained only in the case of a maiden who has been under the guardianship of her father or any other relation And even in the absence of a giver, it is only one of such a description regarding whom a choice by herself has been ordained Nor, moreover, can there be a deprivation of the privilege of one's *Dharma* (merely) on account of a condition of slavery Slavery means only dependence, not apostasy from one's own religion.

Nor, even a prostitute is a common woman, since³ there is no caste where an intercourse is permissible excepting with such as have sprung from the (union with the women of) lower orders And if she falls within (one of) these, then a connexion is not permissible as has been mentioned before If (it be that) they are sprung from a *Pratiloma* union, then certainly they are much more not approachable.

Therefore on account of the degradation incurred by these women by coupling with another man, and by a further repetition of a censured act, as also by reason of the rule of prohibition against

1 Not found in the published edition of Manu Of Narada Ch XII 49

2 Of Manu Ch V 154 and 157

3 Here, three cases are possible A prostitute may either belong to a caste (1) other than that sprung from an *Anuloma* connexion of the *Varnas*, or (2) which has sprung from such a connexion, or (3) which originated in a *Pratiloma* connexion of the *Varnas*, and the Author examines each case See *Sebodhini* p 106 B 24-27 and *Bajambhatti* p 340

an intercourse with one who has fallen, these women are not fit to be approached by all men¹

[The answer is] This is true But here, there being an (absolute) absence of a visible obstruction *e g* the fear of the father or other guardian, or of the Royal sanction, the use of the language² that 'a connexion with them is permissible' is proper And also by the text³ 'In the case of protected female slaves or kept mistresses &c' the punishment being confined to a particular case *etc* of a woman who has resorted to one particular man when that condition does not exist in absence of punishment is necessarily inferred And again in the case of wanton women and others there is an absence of punishment, since no rule has been ordained, and also an inference may be drawn from what is indicated in the text⁴ 'He should not cause anything to be paid by a maiden who approaches a man of a higher caste' 5

An exception⁵, however, on account of falling off from one's own religion has been ordained equally for the women who are approached, as also for the men who have connexion 10

As for the inclusion of prostitutes among the *Varnas*, which has been maintained above as an inference from the fact that there is no separate caste for them on the argument⁶ that prostitutes are human beings and must therefore be included as falling within any of the *Varnas* or 20

1 Here ends the objection and the Answer commences next

2 Of Yājñavalkya II 290

3 This passage has been referred to in two recent cases: in *Chumal vs Surayam* 33 Bom 434 at p 440 where Chandavarkar J discusses it and in *Hiralal Singh vs Tripura Charan Roy* 40 Cal 600 (F B) at p 663, where after quoting Dayabhaga Ch IV Sect III § 37, Mookerjee J observes as follows

'The language used in this passage does not restrict its application to the *stridhana* property of a respectable woman only, the language is comprehensive enough to include *stridhana* property of a prostitute *who does not fly the mere fact of lapse into prostitution ceases to be a Hindu or to be subject to the rules of Hindu Law*', and Yājñavalkya II 290 and the Mitāksharā thereon has been relied upon

4 of Manu Ch VIII 365

5 See Prayascittadhyaya p 287 ll 7-8 also *Chumal vs Surayam* 33 Bom 433 at p 440

6 The full syllogism would stand thus

All human beings must belong to some *Varna* or caste

The *Vidyās* are human beings The *Vidyās* belong to a *Varna* or a caste

Āpūloma castes, as is the case with a Brāhmana, that is not correct. These castes, *e g* *Kūṇḍa*¹, *Golaka* and the like, are unending. Therefore the inference must be drawn that a caste known as *Vesṣyā* being well known in the world similarly as that of a Brāhmana and the others is of an old origin, having sprung from a connection with a *Vesṣyā* female with a man of her own caste or of a superior one, and deriving maintenance from having sexual intercourse with men. Nor is this tradition without a basis. It has indeed been recorded in the *Skandapurāṇa*² thus: "There are certain *Apsarasas* called *Pancha-chūḍā*, their progeny is known as the *Vesṣyā* and is regarded as a fifth "caste". Therefore as there is no rule for them to marry and remain

1 There are defined in *Mānu* Ch III 174 "They are sons begotten on another man's wife, when born during the husband's life time, the son is called a *Kūṇḍa*, and when born after his death, he is known as a *Golaka*."

2 The passage in full has been given in the note on pp 154 to 5 of the Sanskrit text. It details the account of the origin of the *Vesṣyās*, describes their five-fold divisions, the characteristics of each, and the general rules governing the class.

The following is the translation of the passage:

"The caste known as the *Vesṣyā* has been known from long before, *O*h *Durjaya*¹. Born of (an intercourse between persons of) the same caste or of different castes, and earning its livelihood from sexual intercourse with males: (1)

¹ Courtesans known as *Pañchachūḍās* lived of old in the City of the Gods. Once upon a time they performed a singing dance in the presence of the Lord of the Gods. (2)

"The sage *Durjaya*, the best of the sages, learned, fiery and endowed with a portion of the God *Śiva* in him, being pleased with their dance and singing, ejaculated 'Excellent!' (3)

"He shouted loudly often and often 'excellent', being full of delight. Seeing this wonderful sight, the women viciously laughed loudly (4) (and exclaimed) 'Does this reciter of the Vedas appreciate our skill in singing!'"

Thus seeing from the signs that he was being insulted, the sage became excited with anger (5) and delivered a curse thus: "Hence to the region of Earth! You do not deserve to be among the Gods!"

* 1AOF 100

"Then being full of fright, the *Apsarasas* began to cry in humility (6)

"They respectfully begged: "Oh protector of the humble, save us!" (7) Thereupon the anger of the angry sage vanished, and he delivered the cancellation of his curse in the presence of the God *Śakra* thus: "There shall arise a fifth caste from these, from (people of) the four *Varṇas*, and then the redemption of these will take place, and never otherwise, oh Never aging ones!" (8).

(Continued on next page)

fixed to one man, in having connexion with a male of an equal or superior class there is no sin implied, nor (is any) penalty (incurred)

by men having access to them when these are not under the protection of any one. Although

PAGE 155* there is no penalty, still invisible sin is verily 5

incurred since the rule is that 'a man should always restrict himself "to his wife", as also an expiation has been ordained in the text

'For having intercourse with brutes or prostitutes, the *Prayāpatya* "expiation is ordained

Śūlapāṇi

10

Yājñavalkya Verse 290

For having intercourse with the undeflowered protected female slaves of others, and also for intercourse with the protected women with their consent, likewise one having intercourse with women of the lower orders although approachable should be compelled to pay a penalty of fifty

15

(Continued from last page)

"Those women too having come down upon the region of the Earth, and being wanton and addicted to sensualities, with great delight did service to the tastes of the twice-born *Varṇas* (10)

"The progeny begotten from these is known as the *Vēśyā*, I shall describe their five-fold distinctions according to their qualifications (11)

"The *Vesyas* are known as *Kalavati*, *Rambha*, *Nayika*, *Ulekhalā*. Among *Vesyas* the *Nayika* is known by her beauty, and is celebrated for the splendour of her dress' (12)

"*Kalavati* is versed in amorous intercourse and is one who has worked for the art of singing and *Rambha* is known to be an adept in matters of beauty, art and dress (13)

'That woman who always has intercourse with two, three or six men, and who is absolutely wanting in art or beauty is known as *Ulekhalā* (14)

'That woman who abandons her own husband and goes to another man of her own *Varṇa* out of love (for him) is called a *Succarā*, slavery is ordained in the descending order of the *Varṇas* and not in the ascending order (15)

"Restrained in speech and restricting herself to intercourse with a man of a higher tribe, she is regarded as a *Dharma* patni, and is considered as a *Pativrātā* even among harlots (16)

"She, who having once accepted a fee from one man does not desire another who offers one or many rupees, or one who offers the (sovereignty) over the three worlds or even *Indra* (17)

'Such a one even though a *Vēśyā* is to be regarded a virtuous and chaste woman, and is respected as a lawfully married wife (18)'

By the text¹ "In the case of protected female slaves," while prescribing a punishment for a connexion with a kept mistress, such as a female slave, a wanton woman and the like, it comes to be inferentially laid down that there is no penalty when these are not in the keeping of any one. So the Author mentions an exception to this

Yājñavalkya, Verse 291

For forcible intercourse with a *Das*, the fine is declared to be ten *panas*. For several (having intercourse) if she is unwilling twenty-four for each separately

10 Mītāksharâ — For a man having *prasahya*, *forcible*, i. e. compulsory intercourse, and without the payment of her fee, with a woman of the class who maintain themselves by sexual connexion with men, e. g. a female slave, a wanton woman or the like, the fine is ten *panas*. If several men have intercourse by force with one single woman even

15 when she was unwilling, then each shall be punished with a fine of twenty four *panas*, separately. If however after paying the fee as desired by her, they afterwards have connexion with her by force, even when she was unwilling then there is no guilt of theirs provided there is no appearance of a disease in her, since Narada² has laid down 'A

20 'female slave who does not go when called upon, shall not be punished, 'if she was diseased or exhausted, or engaged or was doing the service of the king."

Sulapant

Yājñavalkya Verse 291

25 For a forcible intercourse with a slave ten *panas*. For many having intercourse with her when unwilling the penalty for each is twenty four *panas* (291)

Yājñavalkya Verse 292

30 A prostitute who has received her wages shall if unwilling pay double, under similar circumstances the man also shall be compelled to pay an equal amount if none is received

Mītāksharâ — When after accepting her fee and even when in good health she is not willing for the owner of the money then she shall pay twice the amount of the fee. Similarly if a man who having paid the fee,

35 is himself unwilling, he shall indeed forfeit the amount (paid by him),

¹ Yajñ II 200

² Not found in the published edition of Narada

for the same Sage¹ has said: "If a public woman declines to receive a man
 "after having received her fee, she shall pay twice the amount (of the fee).
 "If the man be unwilling, he shall forfeit the amount, even if he had
 "paid the wages." Similarly another special rule also has been stated
 by the same Sage²: "The same (fine shall be imposed) on a man 5
 "who does not pay the (stipulated) fee, after having had connexion
 "with a woman (of this description) (18); or who had forcible con-
 "nexion and who has thus caused scars by the hand, teeth, or nails.
 "Should a man have connexion with her in an improper part, or
 "cause her to be approached by many, he must pay eight times the 10
 "amount of her fee, and a penalty in an equal amount (19). Women
 "who are prominent among *Veśyās*, who are adepts in matters of
 "sexual intercourse, and who are residents of the houses there, shall
 "declare a decision in case of any doubt, in disputes arising therefrom."

Yājñavalkya, Verse 293

15

For a man having intercourse with a woman in an improper part, as
 also with a man, or for passing urine, the fine shall be twenty-four *panas*,
 as also for having intercourse with a female ascetic.

Mitākṣharā:—Moreover, he who has sexual connexion with one's
 own wife in the mouth or any such other part, or discharges the urine 20
 or excretion in the mouth of a male; or likewise has intercourse with
 a female ascetic shall be fined twenty-four *panas*.

Sūtapāṇi

Yājñavalkya, Verse 293

For one having intercourse in the lower parts other than the female 25
 organ, twenty-four For having intercourse with a male or sexually
 approaching a woman who has entered the fourth order, the penalty is
 twenty-four *panas* (293).

Yājñavalkya, Verse 294

For having connexion with an *Antyâ* woman he shall be branded with an obscene mark, and banished. If a *Sûda* has a like intercourse he himself becomes an *Antya*. For an *Antya* having intercourse with an *Arya* woman, (death is the punishment)

Mitaksharâ — An *Antyâ* woman is a female of a *Chândâla*. For having connexion with her, members of the three *Varnas* who are not ready to perform an expiation, shall be fined a thousand *panas* according to the rule of *Manu* viz. 'and a thousand for an *Antyâ* woman,' and then *kubandhena ankyâh*, shall be branded with an obscene mark, i. e. indecent mark e. g. the mark of the female organ, and the king should banish them from his kingdom. For one, however, who is ready for an expiation, fine alone (shall be the punishment). A *Sûda*, moreover, having connexion with a *Chândâla* woman, himself becomes an *Antya* or *Chândâla*. For one, however, born of an *Antya* e. g. a *Chândâla* or the like other, death alone (is the punishment) for having connexion with a woman of a higher class.

Thus ends the Chapter on Intercourse with Women

Viramitrodaya

The Author mentions penalties for adultery proper (as are) on the several occasions

Yājñavalkya Verse 286-94

For having intercourse with an unwilling wife of another of the same *varna* and under his protection, the penalty is the highest amercement, and for intercourse, however, with the father's sister etc. the penalty is death only as the Author will state in the third book, as says *Manu*. "A *Brâhmana* shall be fined a thousand for an intercourse with a guarded *viprâ* woman against her will, he shall be fined five hundred "when he had connection with one who was willing. Here, for intercourse with a woman of Another *varna* of a lower order the punishment is the middling amercement. In this connection *Manu* states a special rule. "A *Brâhmana* having intercourse with an unprotected *Kshatriyâ* or *Vaisyâ* woman or with a *Sûdrâ* woman "shall be punished with five hundred with a woman born of the lowest class, however, a thousand. A thousand shall a *Brâhmana* be compelled

"to pay for having intercourse with one protected in a house For a
"Kshatriya or a Vaisya the same shall be the penalty with reference to
"a Sudra woman By the expression *pratitomya*, 'in the inverse order',
it is intended that the males of the Sudra etc shall be capitally
punished for having intercourse with a Vaisya woman, and for a
woman of a lower order the punishment shall be the lopping off of the
ear and the nose This is the meaning This, moreover, has a reference
to a woman under protection That says *Manu* 'The same too
"however, for having intercourse with a Brāhmaṇa woman under
"protection shall be punished like a Sudra, or be burnt in a hay-fire

"If, however, a Vaisya or a Kshatriya have intercourse with an
"unprotected Brāhmaṇa, the Vaisya shall be made to pay five hundred,
"and the Kshatriya one thousand For a woman having voluntary
intercourse with a man of the same *varṇa* or one of a lower order, a
punishment shall be administered For one, however, who has been
enjoyed by a man, there shall be no punishment, *vide* the following text
of *Matsyapurāṇa* "He, however, who violates in any way another's
"wife by force, for such a one, the punishment shall be corporeal
"chastisement Of the woman, however, there shall be no offence

*Manu*¹ "If a Vaisya has intercourse with an unprotected Kshatriyā
"woman, or a Kshatriyā with a Vaisya woman, these two shall deserve
"the punishment the same as for one having intercourse with an un-
"protected Brāhmaṇa woman *Gautama*² in connection with the punish-
ment for a Sudra says "For an intercourse with an Arya woman, cutting
"off of the male organ and deprivation of the entire property, and if she
"would be one under protection the additional punishment of death
*Baudhiyana*³ states the procedure for (the punishment of) death "One
"should burn a Sudra with a hay fire. *Hārīta* "For one having violated
"the bed of one of a superior order the king shall have him tied and
"devoured by dogs and shall have him burnt with faggots *Yama* "If a
"Brāhmaṇa woman infatuated by passion has recourse to a Sudra such a
"one the king shall punish to be devoured by dogs at the place of the
"executions When a Brāhmaṇa woman has recourse to a Vaisya or a
"Kshatriya, there shall be a shaving of her head and she shall be paraded
"on a donkey *Brhaspati*⁴ "Where a woman comes to a man's house
"and excites his concupiscence by touching him or the like acts, she

1 Ch VIII 377-78

2 Ch VIII 383

3 Ch XII 2-3

4 Ch II 253

5 Ch XXIV 15-16

"shall be punished, half her punishment shall be inflicted upon the man. Her nose, lips, and ears having been cut off, she shall be paraded in the streets and plunged¹ into water, or she shall be got devoured by dogs in a public place frequented by many persons (286)

- 5 *Alanḥrtām*, 'bedecked with ornaments' i. e. bedecked with ornaments for (the purpose of) nuptials, a maiden from among those of the same *varṇa* : i. e. a maiden of the same *varṇa*, for one kidnapping such a one for sexual intercourse when she is unwilling, the highest amercement, otherwise : i. e. when she is not bedecked with ornaments for
10 nuptials, one kidnapping a maiden of the same *varṇa*, should pay as the penalty the first amercement. In the case of an inverse order : i. e. for a member of a lower order kidnapping the maiden of a higher order death has been laid down for the kidnapper (287)

- In the case of maidens of lower orders who are willing and are
15 kidnapped the fault of the kidnapper shall not be such as to deserve a punishment otherwise, however, : i. e. when she is not willing, there shall be punishment for the kidnapper. As says Nārada² "For a member of
"the same *varṇa*, for a transgression against a maiden of the same *varṇa*
"with a passion, but, however, that one should adorn her with ornaments,
20 "and after having duly honoured her he should marry her. In the case of one who was unwilling and who has been kidnapped Sankha says
"One equal (in *varṇa*) should be resorted to after giving her the money
"price, ornaments and *śtrīdhana* in duplicate 'For defiling etc.' For
defiling a maiden by inserting a finger in the secret part of one who was
25 unwilling, whether of the same or lower *varṇa*, the lopping off of the hands of the defiler should be made. In the case of one of a higher order, for causing the defilement, capital punishment has been stated. Here the option stated by Manu³ is admissible. 'That man who through arrogance
"forcibly contaminates a maiden, two of his fingers shall be instantly cut
30 "off, and he shall pay a fine of six hundred *panas*' (A punishment) exceeding six hundred being equal to the cutting of three fingers. Here Manu⁴ "A man of equal caste who defiles a willing maiden shall not
"suffer the amputation of the fingers, but shall pay a fine of two hundred with a view to prevent a repetition of the act (369)

- 35 "A damsel who herself pollutes another damsel shall be fined two hundred *panas*, pay double the *sulka* and receive ten lashes with a rod (370)

1 The Benares edition reads *पुनः* shall be shattered to pieces¹

2 Ch XII 72

3 Ch VIII 368

4 Ch VIII 369-71

"But a woman who pollutes a damsel shall instantly have her head shaved and two fingers cut, and also be paraded over a donkey" (371).

'Pollutes' i. e. defiles by inserting her fingers; 'woman' i. e. a young woman (288).

The Author mentions a penalty for other kinds of defilement by the verse 'A hundred for defiling a woman etc.' Here by the word woman is expressed by regard to the context, a maiden, of her, for a slander by any one, other than the bridegroom, with the allegation of her being affected with epilepsy, although existing, or a similar disease, such a one shall pay one hundred *panas* as the penalty. If, however, he makes an allegation as to epilepsy etc which as a fact does not exist, then he shall pay a fine of two hundred *panas*. For a bridegroom, however, for making a false allegation, a penalty has been stated in the first book¹ under the text: "Who falsely blames (a girl shall be punished with) a hundred." For pointing out a fault (which exist) as a fact, however, there is no offence for a bridegroom.

'Beasts' i. e. beasts others than cows, such as a sheep and the like. For connection with a woman of a lower order, such as a Sūdrā woman or a cow, he shall be made to pay the middle amercement. By the use of the word *cha* is cumulated what is established by the text of *Manu* cited before viz. "For intercourse with a Kshatriyā or a Vaisyā woman under "protection one shall be compelled to pay the highest amercement" (289).

The Author mentions an exception to the text stated before (269) viz. 'A woman of a lower order etc.' A female slave not taken over or marriagable by a particular person is of three varieties. One who has been prevented from intercourse with any other man but has been reserved for his own enjoyment is a kept mistress as also a prostitute. A kept mistress, however, shall not be available for sexual intercourse by any person other than himself, one who would do service to self. In the case of these three enumerated, with the first and the last, even though intercourse with them is restricted to a particular man, any other man having intercourse shall pay a penalty of fifty *panas* (290)

And for an intercourse with force with a female slave or with a prostitute the penalty is ten *panas*. When a prostitute who is unwilling has been subjected to the intercourse of many men without break, then the penalty for each is twenty four *panas*. Thus, therefore, for inter-

the mouth or the waist having intercourse by penetration, the penalty is twenty-four *paṇas*. By the use of the word *api* the Author adds an enhanced punishment than that mentioned before in the case of those who are approachable (293).

The *antya* woman, i. e. a *Chāṇḍālī* woman having intercourse with a member of the first three orders should be branded with an obscene mark i. e. an indescient mark i. e. the mark of the female organ, and should be banished from the territory. A *Śūdra*, however, having intercourse with an *antya* woman should only be branded similarly with the mark of the female organ, but should not be banished. For a member of the *antya* tribe having intercourse with an *Ārya* woman the punishment (is) death (294).

Thus ends the Chapter on Adultery with Women

Śūlapāṇi

Yājñavalkya, Verse 294

One who is born in the lowest is the lowest below which there is no lower grade of a *Śūdra* caste; for having intercourse with such a one i. e. with a *Chāṇḍālī*, he should be branded with a mark of a headless corpse and should be expelled. A *Śūdra*, however, should simply be branded as above. He should neither be expelled nor punished. For having intercourse with an unprotected twice-born woman, death alone is for a *Śūdra* (294).

In the book on *Vyavahāra*, another Title of Law viz. 'The mutual relations of men and women' has been propounded by *Manu* and *Nārada*. There *Nārada*¹ says: "That title of law in which the legal rules for women and men also regarding marriage and such other relations are stated is called 'the Mutual Relations of Women and men.'²" *Manu*² also says: "Day and night, women must be kept in dependence by their own males, and if they attach themselves to sensual enjoyment, they must be kept under one's control."

Although a suit mutually between the husband and wife as plaintiff and defendant in the king's court is prohibited,³ still when transgression of their mutual duties has been mentioned directly or by hearsay, the couple should be restored to the right path by the king by a fine or the like (penalty); otherwise he becomes blameworthy. This is the precept laid down for a king in connection with the duties of Husband and wife, in the Chapter called 'the Duties of a King' in the book on *Vyavahāra*. This, moreover, has already been discussed in detail in the chapter on Marriage, and so has not again been mentioned by the Lord of the Yogis.

1. OM. XII. 1. 2. Ch. IX. 2. 3. See Page 750. II. 11-14 above.

CHAPTER XXV

Miscellaneous Disputes (*Prākīrṇa*)

- Now is being commenced the title of Law called Miscellaneous. Its nature has been stated by Nārada¹ 'Under the head of Miscellaneous (Disputes) are comprised Law Suits depending on the king (such as) transgression of the King's Commandments, as also obedience towards his injunctions (1). Grants of towns, the divisions of the constituent elements of a state, the duties and their opposite of *Pūlhandis*,² *Naigamas*, *S'rems* and *Ganas* (2) Disputes, likewise, between father and son, neglect of (prescribed) penances, abstraction of gifts (made to worthy persons) and also the wrath of the anchorites (3) Sinful confusion of castes, the rules regarding their means of subsistence, and (in short) whatever has not been noticed in the preceding titles of law, all that shall come under (the title called) Miscellaneous (4) "

In the Title of Law called the Miscellaneous, such disputes as have a reference to the transgression or the obedience of the king's commands, are closely connected with the king. In such cases the king himself must assume the role of a contending party against such persons as act 'in violation of the (laws of) *Smṛitis* and usage', and decide the suit. By saying this, the definition necessarily comes to be laid thus "That suit wherein the king is a party is called *Prākīrṇa* or Miscellaneous"³

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There the Author mentions a particular penalty for a particular offence

25 Yājñavalkya Verse 295

He who either omits or adds anything by writing in the king's edict or allows an adulterer or a thief to escape, shall suffer the highest amercement

80 Mitāksharâ—He who writes *rājasāsanam* the king's edict, by exhibiting either less or more area of the land granted by the king, he also who after apprehending an adulterer or a thief, lets him off without making him over to the king, both these shall be punished with the highest amercement.

1 Ch XXII 1-4

2 All these terms have been explained before. See p. 1230 and notes 1 & 2

3 This is the definition of the *Prākīrṇa*, and the description of it given by Nārada above as also the enumeration of titles which may be included therein. It is clear that it includes those kinds of disputes where the State is a party, i.e. Disputes of a Public character. Cf. The Public Law of the Roman Jurisprudence

Viramitrodaya

Nārada has defined¹ the title of law called 'Relations between men and women' 'Where the ritual of marriage of women and men is, described, that title of law is called 'Relation between men and women' This chapter having been in terms already dealt with by the chapter on marriage, the Author passes it over and begins by an entire chapter the title of law known as Miscellaneous and characterized by Nārada² as follows (same as Mitakshara on p 1364 lines 4-15) 5

Yājñavalkya Verse 295

One who writes by either omission or addition an order commanded by the king for him, as also for one who lets go an adulterer or a thief, the penalty is the highest amercement. By the first use of the word *api* is included an adverse implication, and by the second use (an addition in) the writing 10

Śūlaparā

Yājñavalkya Verse 295

He who omits from or adds in writing to the order of the King for him, and for one who has sexual intercourse with others' wives, as also for one who lets a thief off the penalty is the highest amercement (295) 15

As incidentally occurring in the context the Author mentions a penalty also in cases other than those which depend on the king 20

Yājñavalkya, Verse 296

For defiling a *Dravya* with an uneatable thing the punishment shall be the highest amercement, a Kshatriya the middlemost, a Vaisya, the lowest, and a Śūdra half of the lowest amercement (shall be the punishment) 25

Mitaksharâ — Dushayitwa for *defiling* a Brahman i.e. making him eat an *uneatable thing* *abhakshyena* i.e. the urine, feces &c. or any such thing mixed with food or drink a man becomes liable to be punished with the highest amercement for similarly defiling a Kshatriya, however, the middlemost (amercement), for defiling a Vaisya, the lowest or first (amercement) and for defiling a Śūdra he becomes punishable with half the first amercement. This is the connection. For defiling with garlic or other similar uneatable things a greater or less punishment should be determined by regard to the greater or less magnitude of the offence 30 35

Vīramitrodaya

Yājñavalkya, Verse 296

- For one accusing a Brāhmana with having eaten an uneatable thing such as fish etc. the highest amercement, for accusing a Kshatriya, the middle amercement, for accusing a Vaiśya the first amercement, for accusing a Śūdra half of the first amercement, shall be the penalty (296).

Śūlapāṇi

Yājñavalkya, Verse 296

- For polluting a Brāhmana with non-estables such as the fish etc. the punishment is the highest amercement; the rest is clear.

As for the higher punishment mentioned by Viṣṇu: "One polluting a Brāhmana with an uneatable shall be punished with ten gold coins", that has a reference to serious (allegations) e. g. about eating garlic and such other uneatables (296)

15 Yājñavalkya, Verse 297

He who deals in false gold, also one who sells unclean meat, shall be maimed and also compelled to pay the fine or the highest amercement.

- Mitākṣharā:—Moreover, a goldsmith or other dealer in gold who palms off false gold prepared by the addition of lustre (to a base metal) by chemical processes, and a butcher or other dealer in flesh, who habitually sells unclean meat e. g. the flesh of a dog or other like animal—and by the use of the word *cha*, 'also', also one who palms off imitation silver or other metal (as good metal)—all these shall be (maimed by being) deprived of the three organs viz. the nose, the ears, and the hands. By the use of the word *cha*, 'and also',—shall also be compelled to pay the fine of the highest amercement, which comes to be inferred from (the use of) the (expression) cutting off of the organs. As for the punishment mentioned by Manu: "But the king shall cause a goldsmith who behaves dishonestly, the most noxious of all the thorns, to be cut to pieces by razors", that has a reference to the gold of a Deity, a Brāhmana or the King.

Vīramitrodaya

Vājñavalkya, Verse 297

A goldsmith or the like dealing falsely and in similar manner *Kṛtāh*, 'in false', i. e. counterfeit gold creating an appearance of gold; a butcher or the like habitually selling unclean i. e. bad meat, such as the flesh of dogs etc., should be deprived of three organs viz. the nose, the ear, and the hand and should be compelled to pay the highest amercement. By the first use of the word *cha* is included the banishment etc. of a Brāhmaṇa who is undeserving of a corporal punishment; by the second use the Author intends the prescribing of a cumulative punishment. By the word *tu*, 'however', the Author excludes other cases such as those which have a reference to the gold of the gods or of the Brāhmaṇa as per the following text: 'A king should hack to pieces with edged weapons a goldsmith set on unjust dealings as the basest of the offenders of all sinners and the greatest thorn' (297).

Śūlapāṇi

Vājñavalkya, Verse 297

One who deals in counterfeit gold by putting on a colourable resemblance, those who sell prohibited meat by describing it as goat meat or the like allowed by law should be deprived of the three organs i. e. the nose, ear, and hands (297).

Yājñavalkya, Verse 298

For any injury caused by a quadruped, when the keeper was crying loudly 'Be away', there shall be no blame; similarly for like injuries caused by wood, earth, stone, arm, or a yoked beast.

Mitākṣharā:—For the offence of killing a man or the like committed by a quadruped, such as a bull, an elephant, or like animals, the blame shall not accrue to the owner of the bull or any other animal when he was loudly crying 'Be away.' Similarly, for an injury likewise caused by the throwing of a club, a clod of earth, an arrow, or a stone, by means of the arms, or by a yoked beast i. e. by a horse or the like while carrying a yoke, no blame shall accrue to the thrower of the wood &c. when he was crying 'Be away.' The object in stating that there is no offence in any injury caused by throwing a wood &c., is to indicate that there is no penalty for such injury. However, the penance for doing anything even unintentionally does verily exist. By the use of the words wood &c. the missiles of *Sakti*, *Tomara* and the like are also included.

Śūlapāni

Yājñavalkya Verse 298

- On an attack by a bull or like animals one who previously shouts loudly Be away, for such a one there is no fault which can deserve punishment So also in the case of one practising at clubs or lumps of earth who before shouts out with the words Be away there is no fault (298)

Yājñavalkya, Verse 299

- In the case of injuries caused by a conveyance owing to the nose string having been snapped or the yoke and the like having been broken or by a rear motion (of the animals) the owner shall not be blamed

- Mitāksharā — Moreover, the string which is used in the nostril is (called) the nose string, that cart or other conveyance where the nose string of a bullock yoked to the cart has given way is a *chhāna nasya* conveyance, similarly (in the case of an injury caused) by a conveyance where the yoke has given way By the use of the term *Ādi* 'and the like' where the axle or the wheels or any other part is broken by the vehicle moving rearwards: e backwards, and by the use of the word *cha* 'also', by going crookedly or coming in front For an injury caused to men or others, the owner or the driver, *adoshabhāk* shall not be blamed since the

- PAGE 158* injury was caused by no action on his part So also Manu¹ (says) 'When the nose string is snapped when the yoke is broken when the vehicle turns sideways or back, or when the axle of a conveyance is broken, and similarly when a wheel is broken (291) When the leather thongs and similarly the rope round the neck or bridle are broken and when the driver was crying 'Be away, Manu has declared that in such cases there shall be no punishment

Śūlapāni

Yājñavalkya Verse 299

- That which is placed on the nose is *nasya* When one is injured by a conveyance carried by bullocks whose nose-strings are snapped so also by a cart with its yoking pin broken By the use of the word *ādi* 'et cetera', are included the wheel and the like By such (conveyances) while riding back if any injury is done the owner does not incur any blame (299)

The Author mentions a punishment for the owner in case of neglect
Yājñavalkya, Verse 300

The owner of an animal possessed of tusks or horns, who although having the power, still fails to relieve, shall pay the lowest amercement, and a double, if the sufferer cried for help

Mitākṣharā — While a man is being injured by animals *damśtiribhiḥ*, possessed of tusks, such as an elephant &c *śṛṅgibhiḥ* or of horns, such as bullocks &c, who are driven by an inexperienced driver, and the owner although he was competent does not relieve them, and then neglects them, then he shall pay the lowest amercement for having engaged an unskilled driver. When however, he does not relieve even when the sufferer cried "Oh I am (being) killed," then a double (fine shall be paid)

When, however, he engages a competent driver, then the driver alone shall be punished, and not the owner, as says *Manu*¹ "If the driver be skilful, he alone shall be fined." Moreover, special punishments shall be determined by regard to particular animals (concerned) as says *Manu*² "If a man is killed, the guilt will be at once the same as (that of) a thief; for large animals such as cows, elephants, camels or horses, half of that (296). For injuring small cattle, the fine (shall be) two hundred *panas*, the fine for beautiful wild quadrupeds and birds shall amount to fifty (*panas*) (297) For donkeys sheep, and goats the fine shall be five *māśas*, and the punishment for killing a dog or a pig shall be one *māśa* (298)"

Vīramitrodaya

Yājñavalkya, Verses 298-300

When the owner of a quadruped loudly warns people with the words "Be away, be away", and any man is killed by an elephant, a bull, or the like, such owner is not guilty of any offence, similarly does not an offence occur on the part of one warning people with the words "be away" for any injury caused by wood etc stored in a cart, and also by others apart away from it (298)

So also the owner of a cart or any other vehicle is not guilty on account of any injury caused by the backward or forward movement of the vehicle due to the nose string having been snapped or the yoke or the yoke pin being broken (299)

- If one who is competent does not offer relief to one who is being injured by a horned beast such as the cow, or a tusked one, such as the elephant etc. such a one should be punished with the first amercement. Similarly when a loud cry is raised and he does not give relief, he should be given double the punishment. *Yugyam*, 'conveyance', i. e. that which is yoked; and the yoke i. e. the wood of the yoke. By the first use of the word *tathā*, 'also', is included the snapping stated by it, and by the second use is stated the snapping without the fault of the driver, as *Mann*¹ has declared a punishment for the owner for a fault of the driver thus: "Where a conveyance goes astray on account of the fault of the driver, there the owner is liable to punishment; when injury is caused, the punishment is two hundred (*paṇas*)". In the expression 'be away', the use of the word *eva* does not exclude the tendency to kill. By the use of the word *tathā*, 'also', a third time, are included animals like the female fox etc. (300).

Śūlapāṇi

Yājñavalkya, Verse 300

- The owner of horned beasts such as the bull etc., as also of the animals with tusks, or tooth such as the apes etc. not offering relief, although competent, when one is attacked by these shall pay the first amercement: If the sufferer loudly cried for help such as "Take away the bull or the monkey" and if relief is not given, then he should pay double (300).

Yājñavalkya, Verse 301

- He who charges an adulterer as a thief shall be made to pay a fine of five hundred. For him who takes money and lets him go, eight times (of) the same. *Mitākṣharā*:—Moreover, out of fear for the disrepute of one's own family, he who accosts a *jāram*, an adulterer with another man's wife, charges him *chaura*, as a thief, and says 'Get thee gone,' *dāpyaḥ-pañcha śalam damam*, shall be made to pay five hundred as penalty i. e. that kind of fine in which are five hundred *paṇas*. He, moreover, who accepts money from the adulterer, as a bribe; and releases the adulterer, such a one shall be made to pay eight times the amount of the sum so received.

Vīramitrodaya

Yājñavalkya Verse 301

One accusing an adulterer as a thief out of fear of disreputation of the family, shall be made to pay a penalty of five hundred *panas*. Having accepted money payment as a bribe, one who lets go an adulterer should be made to pay a fine eight times of the amount received (301) 5

Sūlapāni

Yājñavalkya, Verse 301

Out of fear for a disrepute of (one's) family, one charging an adulterer with the words "Here is a thief running away" shall be punished five hundred. One accepting money and releasing an adulterer shall be compelled to pay eight times the amount (301) 10

Yājñavalkya, Verse 302

The king should banish after cutting off his tongue, him who always imprecates evil upon the king, who calumnates him, as also he who divulges his secret counsels 15

Mitāksharā — Again, one imprecating evil upon the king & g immical sentiments towards the king always: & who speaks often and often, as also one who *tasyaivakrosakārmam* calumnates him, & & the king: & who has a habit of defaming him, as also one who divulges & & reveals to unfriendly persons *tanmantrān* his secret counsels calculated to increase the prosperity of his own kingdom, or to bring about the fall of another kingdom, the king should cut off the tongue of such a one, and banish him from his own kingdom 20

For stealing the treasury, or for a like offence, moreover, death alone (as the punishment), *vide* the text of Manu: 'On those who rob the "king's treasury, and those who persist in opposing (his commands)" he shall inflict various kinds of corporal punishments, likewise who "conspire with the enemies" ' Various (kinds of) punishments' e.g. confiscation of the entire property, cutting off of a limb, death &c. 25 30

Even where there is confiscation of his entire property, that which is the means of his livelihood must not be attached excepting the implements of theft, as says Narada: 'The weapons of soldiers, the "beasts of burden and the like of those who maintain themselves by "conveying the goods (of others), the ornaments of public women, 35

"the various musical or other instruments of those who are proficient in these (10); And any implement¹ by which artificers gain their subsistence, must not be laid hold on by the king, even when he confiscates their entire property (11)"

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- 5 On account of the prohibitive text, viz "for a Brāhmana, however, there shall be no corporal punishment," the shaving of his head, and the like should be made in the place of execution, *vide* the text of Manu². "For a Brāhmana, however, (the punishments are), the shaving of the head, the branding and banishing from the town
- 10 "viz, by branding his forehead with the mark of the crime with which he is charged, and by making him ride out on a donkey"

Vīramitrodaya

Yājñavalkya, Verse 302

- 15 One who indulging loudly in denunciations of the king i. e. one traducing the king, or one communicating his secret counsel to his enemies, should have his tongue cut off and be banished. This is the meaning

- By the first use of the word *cha* is included the (punishment of) deprivation of the entire property stated in the text of Nārada³ viz "For one who decries a king who is pursuing his own duties shall have his
- 20 "tongue cut off if his mind is not inclined at the deprivation of the property." By the second use of the word *cha* are included punishments prescribed by Manu⁴ in the various offences in the following text "On those who rob the king's treasury, and those who persist in opposing (his commands) he shall inflict various kinds of corporal punishment,
- 25 "ments, likewise on those who conspire with the enemies"

Śūlapāni

Yājñavalkya, Verse 302

- 30 One who makes a public accusation against the king in the presence of a large number of people, one who traduces the king, as also one who discloses his secret counsel which is the basis of the stability of the kingdom, should have his tongue cut off and be banished. For a Brāhmana, however, only banishment (302)

1 Dr Jolly, edition reads शिल्पद्रव्याणि शिल्पिणाम् Fr 'The tools of artisans'

2 Not found in the published editions of Manu

3 Ch XV-XVI 30

4. Ob IX, 276

Yājñavalkya, Verse 303

For one who sells what was found on a dead body, and likewise for him who strikes his *Guru* (seniors) and (also) for him who mounts the king's conveyance or throne, the punishment is the highest amercement

Mitākṣharā — Moreover, for a vendor of what is found on the body of a dead person *e g* clothes flowers and the like, for one who strikes his *Guru* : *e* the father, the preceptor and the like, and likewise for one who without the permission of the king mounts on his conveyance *e g* the horse, the elephant and the like, as also his seat, such as the royal throne or the like the punishment is the highest amercement 5

Vīramitrodaya Yājñavalkya Verse 303

For one who sells articles such as a garland etc found on a dead body, as also one who strikes a preceptor, and for him who mounts a horse belonging to the king or his throne without his permission, the penalty is the highest amercement By the use of the word *tathā*, 'also', are included those who beat their wives or sons with anything other than a rope or a bamboo stick or at a place other than the back (303) 15

Śulapāṇi Yājñavalkya, Verse 303

For one who sells clothes and the like placed on a dead body, the punishment is the middle amercement, as also for one who beats a senior, or one who mounts the king's conveyance or throne (303) 20

Yājñavalkya, Verse 304

For him who puts out both eyes him who predicts¹ evil of the king and for a *Sūdra* living as a Brahmana the punishment is eight hundred (*panas*) 25

Mitākṣharā — Again, he moreover, who through anger puts out the eyes of another, he also, who being a scholar in the science of astrology but who, not being the preceptor or a like other well wisher (of the king,) predicts an evil : *e* an inauspicious event about the king *e g* 'By the end of the year you will be deposed from your throne' or the like, and likewise one who being a *Sūdra*, with the object of getting a meal exhibits the sacred thread and other marks of a Brahmana (on his body), for (all) these the punishment is eight hundred (*panas*) : *e* that kind of punishment in which there are 30

1 राक्षसिणम् It may also mean "who imprecates evil" or "spreads evil report" about the king; or also, who obeys the commands of the king's enemies" 35

eight of a hundred *panas* For a Sûdra putting on the disguise of a Brahmana with the object of getting an anniversary meal, the punishment prescribed in another Smṛti should be observed *viz* "A mark resembling the sacred thread should be carved on his body by means
5 "of a heated pin" For one wearing the sacred thread or other sign of a Brahmana for obtaining maintenance, death alone (is the punishment), *vide* the text "He should corporally punish those Sûdras who wear "the marks of the twice born"

Vīramitrodaya

Yājñavalkya Verse 304

10 For one piercing the eyes of another, as also for one who performs a behest of an enemy of the king, as also for a Sûdra subsisting on alms received by wearing the emblems of a Brāhmana, the punishment shall be eight hundred *panas*. This is the meaning

15 If while living as a Brāhmana a Sûdra has sexual connection or the like with a Brāhmana then he should certainly be put to death *Vide* the text of Manu¹ "All these the king shall punish, as also the "Sûdras who wear the marks of the twice born "For a Sûdra wearing "the garb of a Brāhmana for (participating in the) *smṛti* performances
20 "such as a meal at a *śrāddha* and the like, the king should brand the "sacred thread on his body with a heated wire, the above punishment laid down in another Smṛti should also be observed The text of Manu² *viz* "One though born low, through avarice earns a living "by the (performance of) acts proper for the highest, such a one the
25 "king shall deprive of all wealth and banish, has a reference to a Vaisya and a Kshatriya By the use of the word *tothā*, 'also', is included the case of one who predicts an evil of the king such as "at the end of the "year you will be deposed from your kingdom" (304)

Sûlapāni

Yājñavalkya, Verse 304

30 Those who pierce the two eyes, those who predict evil of the king, for a Sûdra also who in the garb of a Brāhmana earns a livelihood, the punishment is eight hundred *panas*, as says Vishnu³ "For striking
35 "out both eyes of a man the king shall not release (such a one) from jail "as long as he lives, or he shall order him to be reduced to a similar state," (304).

The Author mentions a penalty for wrongly deciding a suit through anger, avarice or like other cause

Yājñavalkya, Verse 305

After, however, reviewing judicial proceedings which have been wrongly decided the assessors, together with the victorious party should be fined in twice the amount in dispute 5

Mitāksharâ —Vyawahâran *judicial proceedings*, *dutdrshân*, which are *wrongly decided*, in contravention of the Smṛti and Usage, and which on account of passion avarice or like other cause, are suspected as being improperly conceived the king should himself decide properly again, and the assessors together with the victorious party in the former trial whose guilt has been established should each be compelled to pay twice the amount of the fine which is prescribed for a defeated party in a litigation In the text¹ 'out of passion, avarice,' there is no rule of punishment for the (wrongful) winner; and thus there is in this verse no (fault of) repetition of the former text² 10 15

When, however, a wrong decision is given in a suit on account of the fault of the witnesses, then the witnesses alone should be punished and neither the winning party nor even the assessors When however, a wrong decision is given in consultation with the king the assessors and all others shall be punished, *vide the text*³ 20

One quarter (of the inquiry together with the king) goes to the "offender, one quarter goes to the witness, one quarter goes to all the members of the court, (and) one quarter goes to the king" This text³ moreover, is intended to demonstrate the guilt of the king and others (to) each severally and not of distributing the share of 25

1 Yagn II 4 see p 643 B 5-8 above The fine for the wrongful winner is not mentioned in II 4 and so this text is not open to the objection of the fault of repetition or tautology

2 of Nārada Ch III 12 see also III 11 Cf with this Manu Ch VIII 18, 19 &c

By these texts even those judges who do not deliberately give a false decision but whose decision comes to be wrong on account of their inattentiveness at the trial, are equally guilty

Medhatithi is of opinion that the guilt goes to the king if the sentence were passed by him, otherwise not

3 i. e. the text of Nārada quoted above

and not that even when the cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c

Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation, *vide* the text. 'What
5 "has been decided through ignorance¹ by another king, and in departure from the principles of justice, even that should be made good
"according to law, after weeding out the injustice"

Vīramitrodaya

10

Yājñavalkya, Verse 306

The disputant who out of suspicion as to the honest character of the first investigation regards oneself as not defeated according to law, such a one, when the other side succeeds against him again, the first party should be compelled to pay him as penalty twice the amount
15 in dispute (306)

Sūlapāni

Yājñavalkya, Verse 306

Although defeated by a judicial decision, one who thinks that he is not defeated, such a one after he is defeated again at court shall be compelled
20 to pay as penalty twice the amount of the former penalty. So says Nārada.² "If a man is of opinion that the suit has been decided and
"punishment declared in a way contrary to justice he may have the case
"tried once more provided he should pay twice the amount inflicted".
"Decided &c completed, decision declared": &c deposed to by the witnesses

25

For one who when defeated destroys himself by the poison or the like Bṛhaspati states "He who destroys himself by poison, hanging, or with weapon, such a one shall after death be besmeared with faeces, he does not deserve any rite (306)

1 The Antl or of this text is not known Neither Balamhātta nor Visweswara mention the name

2 There is an error in the print of the text at p 100 l 8.

For एतं एतं read एतं एतं

3 Ch I 65,

The Author indicates the devolution of wealth unjustly recovered as a fine

Yājñavalkya, Verse 307

What has been obtained, through injustice by the king as a fine, having dedicated it to Varuna he should give it himself to the Vipras (after) increasing it thirty-fold. 5

Mitākṣharā —That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brāhmanas after mentally dedicating thus "This to Varuna." And as much was taken unjustly in the form of a fine from a party so much should be repaid to him, otherwise there would be the offence of theft, and also as the fine was recovered unjustly, the right of ownership of the first owner remained unaffected 10

"This interpretation of the Dharma Sāstra is the composition of Viṣṇūśeṣvara himself, a Yogin and a disciple of the sage bearing the title of Uttama (1). 15

"Thus has been set out the commentary on the Vyavahāra Kāṇḍa of the Sage Yājñavalkya, saturated with sweet language—terse, but direct, and (at the same time) expounding the deep meaning (in it) (2) 20

'The composition called Mitākṣharā has been set out by me in language deep (in meaning) and clear (in expression), wide in import (although) terse in form (3)

"The Interpretation of the work of the Sage Yājñavalkya, thus concluded to what learned man will it not be acceptable? Though extremely concise in words it is as extensive in import, and sprinkles the immortal nectar (of learning) on the ears (4). 25

"Thus ends the Second Chapter called the Vyavahāra of the commentary called the Rju Mitākṣharā on the Treatise on Dharma Sāstra by Yājñavalkya, being a work of Viṣṇūśeṣvara Bhaṭṭāraka the leader of the Ascetics of the blessed Paramahansa, order, and the son of the worthy Padmanābha Bhaṭṭa Upādhyāya' 30

the (*apūrva*¹) unseen result (to be known hereafter) to each severally, as it has been said²: "An *apūrva* generates a result which (individually) "accrues to the actor (alone)"

Vīramitrodāya

Yājñavalkya Verse 305

- 5 The King should try again causes at law in pursuance of the (rules of) Śāstra when he comes to know that these causes have been wrongly investigated through of feelings of passion, malice, anger etc and the councillors who tried the first cause should be severally punished
- 10 with twice the amount involved in the suit, along with the successful party who got success by the wrong investigation. In some books instead of *prthak*, 'separately', the reading is *damam* 'punishment.' Although as stated before, the punishment for the councillors has been here declared by way of the statement of a rule of punishment for the
- 15 successful party, the first use of the word *tu*, 'however', discriminates a cause honestly investigated by councillors from the one where the councillors become punishable on account of a retrial. By the use a second time of *tu*, 'however', is excluded the punishment of one who has been fraudulently defeated (305)

Śūlapāṇi

Yājñavalkya, Verse 305

- 20 When judicial trials held according to law are again investigated with the help of many Brāhmanas versed in the Śāstras, if it is decided in the reverse, the first councillors together with the successful party shall
- 25 each be separately punished by the King. Nārada³ states a special rule "In the case of those trials which have been tried by the help of witnesses "and councillors and also those which have been defeated on account of

1 According to the Ārya rules about the accrual of responsibility, in addition to the results of one's acts which the actor has to suffer in this world, he also prepares for himself by his thoughts and actions, something which always sticks to him even after he leaves the human body. That is known as अर्थापूरवा *Apūrva* or "that unseen result of virtue and vice, which is a relation superinduced, not before possessed, unseen, but efficacious to connect the consequence with the past and remote cause, and to bring about at a distant period or in another world or birth, the effect."

2 See Jalmitī III 7-8 (18-20)

The meaning is that in the case of *Apūrva* there is no division or distribution of the guilt or its consequences, but that each one is jointly and severally amenable to the entire result.

अपूरवा : • अपूर्वा Relating to, कृतकर्तृवि : • relating to the actor

3 Ch. II. 40

his own evidence, there is no re opening of it, nor can there be under the 'law a re trial' In the case of those which have failed on account of the witnesses and the councillors by an accusation of the witnesses or councillors, there will not be a judicial trial again, 'defeated by his own evidence' i.e. defeated on account of the mutually contradicting testimony So also 5
Brhaspati By reason of his running away without filing a reply, as "also by taking resort to the opposite party, one who is defeated, the "plaint of such a one is not admitted, as also of one who has given up "his own statement" (305)

The Author mentions a penalty for one who tries to upset a proceeding decided according to law and justice 10

Yājñavalkya, Verse 306

One who although defeated according to law and justice still thinks 'I am not conquered' such a one coming again (into Court) shall be made to pay double (the amount as) fine, when he is defeated 15

Mitāksharā — He, moreover, who although defeated after a legal procedure, (still) impudently thinks 'I am not defeated', such a one coming again into the court of law by adducing evidence of false documents and the like, after he is again defeated at a legal trial, should be made to pay double the amount of fine 20

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It has also been said by Nārada "If a man is of opinion that "the suit has been decided and punishment declared in a way contrary to justice, he may have the cause tried once more, provided "he should pay twice the amount of the fine inflicted" *Tīrtam* 'decided i.e. by means of the documentary evidence, witnesses, &c 25
but where the fine was not pronounced *Uddṛhta dandam*, 'where the punishment is declared,' i.e. which has been carried to the stage of the declaration of the fine

Again, as for the text of Manu "Whenever a suit has been 'decided, or a fine declared, a wise man should consider it as (finally) 30
'decided, and must not annul it,' it means that, in cases where a doubt arises as to the legality of a decision on account of the complaint either of the plaintiff or of the defendant, the same may again be judicially tried after having first affirmed him to (pay) a double fine.

and not that even when the cause has been finally decided according to the rules of justice, it should be retried by a king through avarice &c.

Again, if a suit has been decided by another king, and if it be in departure from justice, even such a proceeding should be set right and decided legally after a careful investigation, *vide* the text: "What
5 "has been decided through ignorance¹ by another king, and in departure from the principles of justice, even that should be made good 'according to law, after weeding out the injustice."

Vīramitrodaya

10 Yājñavalkya, Verse 306

The disputant who out of suspicion as to the honest character of the first investigation regards oneself as not defeated according to law, such a one, when the other side succeeds against him again, the first party should be compelled to pay him as penalty twice the amount
15 in dispute (306).

Śūlapāṇi

Yājñavalkya, Verse 306

Although defeated by a judicial decision, one who thinks that he is not defeated, such a one after he is defeated again at court shall be compelled
20 to pay as penalty twice the amount of the former penalty. So says Nārada: "If a man is of opinion that the suit has been decided and punishment declared in a way contrary to justice, he may have the case "tried once more provided he should pay twice the amount inflicted". 'Decided' i.e. completed; 'decision declared' i.e. deposed to by the witnesses.

25 For one who when defeated destroys himself by the poison or the like Bṛhaspati states: "He who destroys himself by poison, hanging, or with weapon, such a one shall after death be besmeared with forces; he does not deserve any rite" (306).

1. The Author of this text is not known. Neither Bālabhāṭṭa nor Viśveśvara mention the name.

2. There is an error in the print of the text at p. 160 l. 8.

For राजा राजद्वजं read राजा राजद्वजः.

3. Ch. I. 65,

The Author indicates the devolution of wealth unjustly recovered as a fine

Yājñavalkya, Verse 307

What has been obtained, through injustice by the king as a fine, having dedicated it to Varuṇa, he should give it himself to the Vipras (after) increasing it thirty-fold. 5

Mitākṣharā :—That fine which had been levied by the king through injustice out of avarice, should be increased thirty times, and the king should himself give the same to Brāhmanas after mentally dedicating thus, "This to Varuṇa." And as much was taken unjustly in the form of a fine from a party so much should be repaid to him; otherwise there would be the offence of theft; and also as the fine was recovered unjustly, the right of ownership of the first owner remained unaffected 10

"This interpretation of the Dharma-Sāstra is the composition of Viṣṇuśeṣvara himself, a Yogin and a disciple of the sage bearing the title of Uttama (1). 15

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"Thus ends the Second Chapter called the Vyavahāra of the commentary called the Rjo-Mitākṣharā on the Treatise on Dharma-sāstra by Yājñavalkya, being a work of Viṣṇuśeṣvara Bhaṭṭāraka, the leader of the Ascetics of the blessed Paramahansa, order, and the son of the worthy Padmanābha Bhaṭṭa Upādhyāya." 30

Vīramitrodaya

A penalty has been stated to be recovered according to Śāstras; if, however, a penalty not according to Śāstra is caused to be recovered by the king, then the king himself is the offender and he himself should
5 'pay the penalty; so the Author says

Yājñavalkya, Verse 307

Anyāyena, 'through injustice', i. e. not in accordance with the Śāstra; *yo dāṇḍo gṛhītaḥ*, 'the penalty which has been recovered', *taṁ*, 'that', penalty increased thirty-fold *varuṇāya nivedya*, 'having dedicated
10 to Varuṇa' i. e. *utsṛjya*, having offered to Varuṇa, himself to the Brāhmanas should give, i. e., make over.

Thus ends in the commentary called *Vīramitrodaya* on *Yājñavalkya* the Chapter known as the 'Miscellaneous title of law.'

Śūlapāṇi

15 *Yājñavalkya, Verse 307*

The penalty which was unjustly recovered, he should first offer to Varuṇa and afterwards making it three-hundred-fold should himself give to the Brāhmanas (307).

Manu¹ states the fruit of holding a judicial trial: "In this
20 "manner a king bringing to a conclusion all these titles of law, washing
"away all sins he attains to the highest state." Having observed i. e. having
investigated, is to be understood. He² mentions the fruit for the punishable—
"Human beings who have committed sins and who have been
25 "punished by the kings, (thus) purified go to heaven like meritorious
"men. Thus by the guilty being punished and the law purified and
"established, the king enjoys the fruit thereof along with the subjects.
"Where the rule of punishment has not been stated by any of the good
"people, there taking into consideration the place, the time, etc., the
30 "punishment is to be declared; this is the rule."

Thus in the commentary of *Yājñavalkya* by
Śūlapāṇi ends the Second Book.

1. Ch. VIII. 42t.

2. Manu VIII. 319.

A List of Chapters in this Book is being stated.

Chapter	I	On the General Rules of Procedure.
"	II	" Special Rules of Procedure.
"	III	" Recovery of Debts.
"	IV	" The Law of Deposits.
"	V	" Witnesses.
"	VI	" Documents.
"	VII	" Ordeals.
"	VIII	" The Distribution of Dāya.
"	IX	" Boundary Disputes.
"	X	" Disputes between owners and herdsmen.
"	XI	" Sale without Ownership.
"	XII	" Resumption of Gifts.
"	XIII	" Rescission of Purchase.
"	XIV	" Breach of Contract of Service.
"	XV	" Transgression of Compact.
"	XVI	" Non-payment of Wages.
"	XVII	" Gambling and Betting on Animals.
"	XVIII	" Abuse.
"	XIX	" Assault.
"	XX	" Sāhasa or Heinous Offences.
"	XXI	" Non-Delivery after sale.
"	XXII	" Trading by Partnership.
"	XXIII	" Theft.
"	XXIV	" Adultery with Women.
"	XXV	" Miscellaneous : <i>Prakīrṇa</i> .

Thus, in all, there are twenty-five Chapters.

FINISH.

